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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 327.

HETTY H. R. GREEN AND EDWARD H. GREEN, APPELLANTS,

vs.

GEORGE M. BOGUE, HENRY W. HOYT, HAMILTON BOGUE, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 20, 1891.

(14,904.)

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1 Pleas in the circuit court of the United States of America for the northern district of Illinois, in the northern division thereof, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for the northern district of Illinois, on Saturday, the eleventh day of October, in the adjourned October term of said court, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the one hundred and fifteenth year.

WM. H. BRADLEY, *Clerk.*

HETTY H. R. GREEN and EDWARD H. GREEN *vs.* GEORGE M. BOGUE, HENRY W. HOYT, HAMILTON B. Bogue, George W. Smith, Abram M. Pence, and Willard T. Block, Henry A. Barling, and Edward D. Mandell, Trustees, and William H. Peters, Receiver of the Norfolk National Bank of Virginia.	21550. In Chancery.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered that on the fifteenth day of February, 1890, came the complainants, by their solicitors, and filed in the
2 office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their bond for costs and bill of complaint in said entitled cause; which said bond and bill are respectively in the words and figures following, to wit:

Bond for Costs.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } *ss:*

Circuit Court, March Term, A. D. 1890.

HETTY H. R. GREEN & EDWARD H. GREEN *vs.* GEORGE M. BOGUE, HENRY W. HOYT, HAMILTON B. Bogue, George W. Smith, Abram M. Pence, Willard T. Block, Henry A. Barling, Edward D. Mandell, & William H. Peters.	In Chancery.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the complainants of any costs ordered or adjudged to be paid by them we hereby agree and stipulate that execution may

issue against our property for any costs taxed against the complainants.

Dated this 15 day of February, A. D. 1890.

BISBEE, AHRENS & DECKER.
L. H. BISBEE.
JOHN P. AHRENS.
HENRY DECKER.

(Endorsed:) Filed Feb. 15, A. D. 1890. Wm. H. Bradley, clerk.

3 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

In the United States Circuit Court in and for said Northern District of the State of Illinois.

To the honorable judges of said court, in chancery sitting:

Your orators, Hetty H. R. Green and Edward H. Green, who are citizens of the State of Vermont, bring this their bill against George M. Bogue, Henry W. Hoyt, Hamilton M. Bogue, George W. Smith, Abram M. Pence, and Willard T. Block, who are citizens of the State of Illinois; Henry A. Barling and Edward D. Mandell, trustees, citizens of the State of New York, and William H. Peters, receiver of the Norfolk National Bank of Virginia and a citizen of the State of Virginia; and thereupon your orators complain and represent that your oratrix, Hetty H. R. Green, is the daughter of Edward Mott Robinson, late of the State of New York, now deceased, and a beneficiary under the last will and testament of said Edward Mott Robinson, as is hereinafter set forth, and that your orator, Edward H. Green, is the husband of said Hetty H. R. Green and one of the trustees under said will, as is also hereinafter set forth; that on or about the 20th day of June, 1864, one Robert W. Hyman, late of Chicago, Cook county, Illinois, now deceased, purchased for the joint account of himself and the said Edward Mott Robinson an
4 undivided one-half of section twenty-one (21), township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian, in Cook county, Illinois, the moneys for which purchase were advanced by the said Edward Mott Robinson, and that on or about the said last-mentioned date an agreement in writing was entered into between said Robert W. Hyman and the said Edward Mott Robinson, setting forth and defining the rights of said Hyman and said Robinson in respect of the said purchase so as aforesaid made, which agreement was and is in words and figures as follows:

"Whereas, Robert W. Hyman, has purchased the undivided half of section twenty-one (21) township thirty-nine (39) north, range thirteen (13), east of the third principal meridian in Cook county, Illinois, for the joint account of himself and Edward Mott Robinson of the city of New York, for the sum of fifteen thousand ($15,000) dollars, upon the terms of six thousand ($6,000) dollars, cash down, and the residue in two equal installments of forty-five hundred dol-

lars each, payable respectively at any time within twelve and eighteen months from the 26th day of April, 1864, according to the tenor of two certain notes of that date secured by deed of trust on said premises, it being recited therein, and in said notes that said Hyman shall have the privilege of paying each of them at the Merchants' Saving Loan and Trust Company's bank in Chicago, at any time before maturity, and that interest shall cease ten days after such payment into bank; and,

Whereas, the said Edward Mott Robinson hath advanced for said cash payment, and doth take the title to said lands, subject to said deferred payments, and to make the same by way of advance, if it shall be necessary or expedient so to do hereafter, and to pay taxes thereon by way of advance.

Now, therefore, this agreement witnesseth, and it is hereby mutually agreed by and between the said Edward Mott Robinson and the said Robert W. Hyman as follows, to-wit:

First. Said Hyman shall sell said premises within one year from the date hereof, unless otherwise agreed between the parties hereto, and shall make no charge for buying, selling or attending to the payment of taxes on the premises.

Second. Said Robinson shall advance all such moneys as may be required to pay taxes and deferred payments on said lands before sale and conveyance, so far as may be necessary so to do.

Third. Upon the sale of said premises the proceeds shall be distributed as follows:

1st. Said Robinson shall be reimbursed all moneys advanced and to be advanced on said premises by him, with interest at the rate of seven per cent. per annum.

2nd. The balance of the proceeds of such sale shall be equally divided between the respective parties hereto.

3rd. An account of sales and of proceeds shall be made and rendered by said Hyman to said Robinson within ten days after such sale is made, if made by said Hyman.

Fourth. And the said Robert W. Hyman for himself, his heirs, executors, administrators and assigns, doth covenant and agree hereby to and with the said Edward Mott Robinson, his heirs and assigns, that whenever sale is made of said premises, that he, the said Robinson, or his heirs or assigns, shall in any event be reimbursed the full amount of all advances made and to be made on said lands with interest thereon at the rate of seven per cent. per annum.

In witness whereof, we, the said Edward Mott Robinson, and the said R. W. Hyman, hereby bind ourselves, our heirs and assigns, to the foregoing agreement and set our hands and seals.

New York, June 20, 1864.

EDWARD MOTT ROBINSON. [SEAL.]
R. W. HYMAN. [SEAL.]

Witness to both:
WM. E. WATSON."

That thereafter, to wit, about the year 1865, the said Hyman, with the concurrence and assent of said Robinson, purchased for the joint account of himself and the said Robinson the remaining undivided one-half of said section twenty-one (21), but that said purchase was not completed in the lifetime of said Robinson.

7 That thereafter, to wit, on or about the 14th day of June, 1865, the said Edward Mott Robinson died, leaving a last will and testament, which was afterwards, to wit, on the 30th day of June, 1865, duly admitted to probate and proved before Gideon J. Tucker, surrogate of the county of New York, in the State of New York; which will was and is in words and figures as follows:

"EXHIBIT 1.

($200 stamp.) ($200 stamp.) ($200 stamp.)

I, Edward Mott Robinson, of the city of New York, merchant, do hereby make, publish and declare this to be my last will and testament, that is to say:

First. I give and devise to my daughter, Hetty Howland Robinson, absolutely and in fee-simple, all of the real estate situate in the city of Francisco, California, commonly known as the North Point Dock warehouse, belonging to me.

Second. I give and bequeath absolutely, to my said daughter, Hetty Howland Robinson, the sum of nine hundred and ten thousand dollars, to be paid to her by my executors in six months from the time of my decease.

Third. I give and bequeath to Henry A. Barling, of the city of New York, a legacy of ten thousand dollars; to Abner H. Davis of the same city, a legacy of ten thousand dollars; and to William E. Watson, of New Bedford, Mass., a legacy of one thousand dollars ($1,000) which legacies, respectively, I direct to be paid in twelve months from my death. I also direct that the salaries of the

8 said Henry A. Barling and Abner H. Davis, under their present employment by me, shall go on, and continue to be paid up to the first day of January eighteen hundred & sixty-six.

Fourth. I give and bequeath to the town of South Kingston, in the State of Rhode Island, the sum of ten thousand dollars, to be paid to the proper authorities of said town by my executors in eighteen months from my death, which sum, with such accumulations of interest as may accrue thereon, I direct to be applied to the said town of South Kingston to build and endow an institution for educational purposes for the benefit of the inhabitants of said town.

Fifth. All the rest, residue and remainder of my estate both real and personal, remaining after the payment of my debts after satisfying the bequests and dispositions here-before contained, I give, devise and bequeath unto Henry A. Barling and Abner H. Davis, of the city of New York, and Edward D. Mandell of New Bedford, in the State of Massachusetts, as trustees, to be had and holden by them, and the survivors or survivor of them upon the trusts following, that is to say, as to the real estate, to collect and receive the rents, issues

and profits thereof, and as to the personal estate to invest and keep invested the same, with power to call in and change the investments from time to time; such investments and reinvestments to be in such securities and property and in such manner as *to* such trustees shall deem safe and prudent, and to con-
9 tinue so to hold the same in trust during the life of my said daughter, Hetty Howland Robinson, and to apply the net rents issues, profits, interest, and income arising from the property embraced in such trust, to the sole and separate use of my said daughter, Hetty Howland Robinson, during her life, separate and apart from any husband she may marry, and free from the debts, control, or interference of any such husband, such application to be of such income only from time to time as it shall accrue and be received and not to be subject to any previous disposition or incumbrance by way of anticipation, and upon the death of my said daughter, Hetty Howland Robinson, to convey, transfer, and deliver over the capital of such trust estate, real and personal, as the same shall then exist, to the issue of my said daughter, Hetty Howland Robinson, if any issue she shall — her surviving in such shares and proportions as my said daughter Hetty Howland Robinson shall appoint and direct by her last will and testament, and if she shall make no direction or appointment then to such issue in equal shares *per stirpes* and not *per capita*, and in case my said daughter, Hetty Howland Robinson shall leave no issue her surviving then upon her death to convey transfer and deliver over the capital of such trust estate, real and personal, as the same shall then exist, excepting four hundred thousand dollars thereof hereinafter
10 disposed of in such event to such person or persons, and for such estates as my said daughter, Hetty Howland Robinson shall, by her last will and testament, direct or appoint, and in default of such direction or appointment, or so far as the same may not extend or be effectual, then to the person or persons who by the present laws of the State of New York would have taken the same as heirs-at-law and next of kin of my said daughter Hetty Howland Robinson if she had died seized and possessed thereof, intestate; and as to the said above-reserved four hundred thousand dollars of such trust estate, I give and bequeath the same at the termination of the said trust upon such contingency of my said daughter dying without leaving issue, in manner following, that is to say: I give and bequeath one hundred thousand dollars thereof to my brother William A. Robinson, of Providence, Rhode Island, if he be then living, and if he be not living then to the issue then living of said William A. Robinson, in equal shares *per stirpes* and not *per capita*, and one hundred thousand dollars thereof to my sister Annie A. Chase, of Salem, Massachusetts, if she be then living, and if she be not then living, then to the issue then living of said Annie A. Chase in equal shares *per stirpes* and not *per capita*, and one hundred thousand dollars thereof to my brother Attmore Robinson of South Kingston, Rhode Island, if he be then living, and if he be
11 not then living, then to the issue then living of said Attmore Robinson, in equal shares *per stirpes* and not *per capita*, and

the remaining one hundred thousand dollars thereof, to my brother, Sylvester C. Robinson, of Salem, Massachusetts, if he be then living, and if he be then not living, then to the issue then living, of said Sylvester C. Robinson in equal shares *per stirpes* and not *per capita*.

Fifth. I give to the trustees of the trust above created and the survivors and survivor of them, power to lease any of the real estate embraced in such trust for any lawful term or terms, and likewise power to sell and convey any of such real estate. And I will and direct that as to such part of my estate as at the time of my death shall be invested in ships or interests in ships, it shall be at the option of said trustees, and likewise of my executors, in their discretion when to sell the same, and they may continue to hold and run any such ship or ships for the benefit and at the risk and charge of my estate for such time as to them may see- fit.

Sixth. It is my express wish and desire that none of my mer-*ch*antile obligations, or those of the firm of William T. Coleman & Co., lately dissolved, for which I am responsible as partner, should be allowed to be protested or dishonored, but that the same shall, notwithstanding my death, be punctually met and paid when
12 due, and I authorize and direct my executors so to meet and pay the same, and to apply to such purpose, any of my estate which may be requisite therefor, and I authorize them, if need be, so to pay such obligations in advance of my will being admitted to probate, and direct that they shall be entitled to indemnity therefor out of my estate.

Seventh. I appoint the before-named Henry A. Barling, Abner H. Davis and Edward D. Mandell to be executors of this, my will, and I direct that the executors and trustees hereby appointed shall be responsible severally, each for his own acts and defaults, and not the one for the other or others.

In testimony whereof I have hereunto set my hand and seal the sixteenth day of March, one thousand eight hundred and sixty-five.

EDW'D MOTT ROBINSON. [SEAL.]

On this sixteenth day of March, one thousand eight hundred and sixty-five, the above-named testator, Edward Mott Robinson, in our presence subscribed and sealed the foregoing instrument and declared the same to be his last will and testament; and we thereupon, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses.

CHARLES F. SOUTHMAYD,
49 9th St., New York City.
JOSEPH H. CHOATE,
93 West 21st St., New York City.
TREADWELL CLEVELAND,
No. 74 West 21st St., N. Y. City."

13 That the said Mandell did not qualify as executor, but the said Barling and said Davis, named in said will as ex-

ecutors, did, on or about the 30th day of June, 1865, qualify and become the active executors of said will; that the said Edward Mott Robinson left him surviving your oratrix, then Hetty Howland Robinson, and left no other child or descendant of any child surviving him, and that afterwards the said sole surviving child intermarried with Edward H. Green, co-complaiannt with your oratrix, Hetty H. R. Green; that afterwards and during the year 1865 the said Henry A. Barling and Abner H. David, the executors of said will, by and with the consent of your oratrix, said Hetty H. R. Green, advanced and paid the purchase price, to wit, seventeen thousand and fifty dollars ($17,050), for the remaining or second undivided half of said section, and that afterwards, to wit, on or about the 24th day of September, 1867, for the purpose of declaring the rights and interests of the several parties concerned, the said Henry A. Barling and Abner H. Davis, as executors, made a certain other agreement in writing with the said Robert W. Hyman, which was and is in words and figures as follows:

"Whereas, Edward Mott Robinson (since deceased) and Robert W. Hyman, who were parties to the agreement of which the foregoing is a copy, did also agree that the remaining undivided half of section twenty-one (21) township thirty-nine (39) north
14 range thirteen (13) east of the third principal meridian in Cook county, Illinois, should be purchased at the price of seventeen thousand and fifty ($17,050) dollars for the joint account and benefit in all respects on the same terms as specified in the foregoing instrument.

And whereas, at the time said purchase was consummated said Edward Mott Robinson had deceased and the title for said additional purchased interest of one-half of said section was at the time namely, about the 24th day of June, 1865, conveyed to the undersigned Henry A. Barling and Abner H. David, executors of Edward Mott Robinson, by whom the purchase-money paid was advanced.

Now this memorandum witnesseth in pursuance of the agreement made between said Hyman and said Robinson in his lifetime, that the said last purchased undivided half of said section is held by the said Henry A. Barling and Abner H. David as executors as aforesaid upon like terms and conditions, so far as respects the share and interest of said Hyman in the profit or loss to result from said purchase as the said undivided half first purchased was held by said Edward Mott Robinson, under the said foregoing agreement of June 20th, 1864, and said Hyman agrees in like manner as he did in respect to the first purchase that said executors shall be reimbursed the amount of all advance they have made or shall make for or in respect of said last purchased half with interest thereon
15 at the rate of seven per cent. per annum.

And it is further understood and agreed between the parties that in respect of both said parcels or undivided half-s purchased as aforesaid, the executors of or trustees under the last will and testament of Edward Mott Robinson have a right at any time, or from time to time, in their discretion, to sell the whole or any part or

parts of said premises, for such price as they may deem expedient, and said Hyman shall be bound by the results of such sale.

It is further agreed in respect of both said purchases, that if within one year from this date, there shall not have been enough received from sales of said premises to reimburse said Robinson's estate for his or its advances, with interest, the executors in making up their eventual account for reimbursements of the estate for its advances and interest shall be entitled to state the account of advances computed with interest up to the end of a year from this date, the whole principal and interest drawing interest from that time, and so from that time forth state the account with annual rests, adding in the accrued interest, provided always that in case of a loss instead of a profit accruing on the purchase, such annual rests shall not be made, but simple interest only for the whole time, without rests, shall be charged.

In witness whereof the said parties have hereunto set their hands and seals the 24th day of September, (1867), eighteen hundred and sixty-seven.

HENRY B. BARLING, *Ex.* [SEAL.]
16 A. H. DAVIS, *Ex.* [SEAL.]
ROBERT W. HYMAN. [SEAL.]

WILLIAM E. WATSON, *As to All.*

That thereafter, from the 20th day of June, 1864, until the time of the death of the said Robinson, and from the 24th day of September, 1867, the said Robert W. Hyman and the said executors of his will advanced all moneys which had been paid on account of said section 21, whether for the purchase price or taxes or assessments or improvements charged against or made thereon, to remove by cancellation claims against the same, and that the title was held to the first-mentioned undivided half of said section twenty-one (21) by the said Robinson at the time of his death, and the title to the other undivided half was taken by the said executor or trustees, but in trust as aforesaid; that the said Robert W. Hyman was a member of the firms of Hyman & Dancy and Dancy, Hyman & Company, doing business prior to the 5th day of July, 1884, in the cities of Norfork, Virginia, and New York, State of New York, and the other members of said firm were Francis M. Hyman and George L. Arps; that said firms in the course of their business became indebted to the Exchange National Bank of Norfork, Virginia, a banking corporation existing under the laws of the United States, in a large sum of money, and that thereupon, in order to secure said bank, procured from the said executors and trustees, Henry A. Barling and Abner H. Davis, a declaration of trust and an agreement to hold proceeds to a certain extent that might be de-
17 rived from the sale of said lands, and delivered the same to the said bank for the security of said indebtedness; which declaration of trust and agreement was and is in words and figures as follows:

"NEW YORK, *July* 5, 1884.

Messrs. Jno. B. Whitehead, pres't, and Geo. M. Bain, Jr., cashier, of the Exchange Nat'l bank, Norfolk, Va.

GENTLEMEN: As the executor of the estate of E. M. Robinson, I hold with my co-ex'r, Abner H. David, a title to six hundred and forty acres of land, being section 21, town of Cicero, Cook county, Illinois, under certain agreements made by and between Mr. Robinson during his lifetime and Mr. R. W. Hyman, and also between the executor and Mr. R. W. Hyman. Mr. Hyman is, upon sale of said property, to receive one-half the net profits, as provided in said agreements, arising from such sale.

Mr. Hyman has requested me that whenever a sale is made of said property, after paying all taxes, liens, and assessments, to hold for account of your bank such sum, not exceeding one hundred thousand dollars, as may be found to be due to him.

As Mr. R. W. Hyman, F. M. Hyman, and George L. Arps, comprising the firms of Hyman and Dancy, Norfolk, Virginia, and Dancy, Hymans & Co., New York, *is* now about to be dissolved, but are still owing said bank by their four several and joint notes for twenty-five thousand dollars each, *several and joint notes for*
18 *twenty-five thousand dollars each* payable twelve (12) months after the 5th of July, 1884, without interest, this understanding is to apply to the renewal of any part or the whole of said notes from time to time as may be agreed upon.

This I hereby agree to, Mr. Hyman joining me in the same with his approval.

Very respectfully yours, HENRY A. BARLING,
For Self and A. H. Davis, Ex'rs.

I hereby approve the above.

R. W. HYMAN."

That the said Hyman, by the delivery of said declaration and agreement and by agreement with the said bank, intended to and did assign to the said bank, as security for the indebtedness above mentioned, his interest in the said trust arising from the aforesaid purchase of the above-described section twenty-one (21); that on or about the 9th day of April, 1885, said Exchange National Bank of Norfolk, Virginia, was found to be insolvent and was placed in liquidation under the direction of the Comptroller of the Currency of the United States, and that the defendant, William H. Peters, was appointed receiver of said bank and qualified as such receiver the 11th day of April, 1885, and on the 13th day of April, 1885, took charge of the assets of said bank as such receiver and has continued from thence hitherto in the discharge of his duties as such receiver; that on or about the 15th day of May, 1885, the said Robert W.
19 Hyman died intestate, and letters of administration upon his estate were on or about the 30th day of June, 1885, issued out of the probate court of Cook county, in the State of Illinois, to Robert W. Hyman, Jr., who was appointed administrator of said estate, duly qualified, and is now acting as such; that on or about

the year 1887 the said Abner H. Davis died; that the said Edward H. Green was thereupon duly appointed trustee in the place and stead of said Davis, and that said Barling and said Mandell and said Edward H. Green have ever since continued to be and are now the trustees under the will of said Edward M. Robinson and are acting as such now, and that on or about the 29th day of August, 1887, the legal title of said section twenty-one (21) was subject to the foregoing trust still in the said Barling, Mandell, and Green, as trustees, and the said Peters, as the receiver of said bank, held the said assignments of the said interest of the said Hyman by way of pledge as securities aforesaid and thereupon, at the date last aforesaid, filed his bill on the equity side of the circuit court of the county of Cook, of the State of Illinois, setting forth the facts in relation to the purchase of said section twenty-one (21) and in reference to the trust under which the same was held by the said trustee and in reference to the hypothecation by the said Hyman of his interest in the said trust, praying that the amount due to him, the said Peters, as such receiver, might be ascertained and the
20 amount due the said trustees might be likewise ascertained, and that the said premises might be decreed to be sold and the proceeds of such sale distributed in accordance with the rights and equit-es of the parties, and that thereafter, the proper parties being brought into court by due course of practice in said court, such proceedings were had that on the 9th day of April, 1888, a decree of the said court was entered in said cause, in and by which, after finding the facts in said case, it is decreed as follows:

"It is therefor- ordered, adjudged, and decreed that the joint adventures so entered upon in the lifetime of said Robert W. Hyman and said Robinson and evidenced by said contracts of June 20th, 1864, and September 24, 1867, be wound up and closed, and that if the amount so found to be due to complainants shall not be paid by the defendants or some of them, with the interest thereon, within 20 days from this date, section twenty-one (21) aforesaid be sold by George Bass, one of the masters of this court, for the purpose of distribution of the proceeds of sale in accordance with the findings herein made. The amount so found to be due to complainants may, with interest, be paid to Smith and Pence, their solicitors.

The said master shall give four weeks' notice of the time and place of such sale by advertisement in one of the newspapers published in the city of Chicago once in each week; that said sale be made for cash.

21 That the said premises shall be offered for — by said master in tracts of ten, twenty, forty, or more acres, and any portion not so sold in smaller tracts, or the whole of said section if no portion of the same shall be sold, shall be offered for sale by the said master; that each bidder at such sale shall, as an earnest of his bid, be required to deposit with said master twenty per cent. of the amount thereof before the same or any portion thereof shall be struck off to him, and the balance thereof shall be payable when such sale shall have been confirmed by this court and the deed shall be made by said master. At said sale any of the parties to

this suit may bid and become purchasers as individuals and divested of their trust relation. The master is directed to report to this court with convenient speed his doings in the premises, and the court reserves the right to reject any and all bids if said premises shall not produce the sum of six hundred thousand — or for other sufficient cause and the entry of an order of distribution until the coming in of said report.

And it is further ordered, adjudged, and decreed that nothing herein contained shall operate to impair or lessen the right of said complainant to enforce as against and collect from the said Arps the amounts of the two notes made by him, with the interest thereon from their date, so bearing date the first day of August, 1885, and payable respectively on the first day of January, in the years
22 1889 and 1890, for thirty-three hundred dollars ($3,300.00) and three thousand two hundred and seventy-six dollars and eighteen cents ($3,276.18), with interest at six per cent. per annum.

And it is further ordered, adjudged, and decreed that the sale so as aforesaid to be made, when confirmed by this court, and the deed or deeds to be made in pursuance thereof shall operate to vest in the purchaser or purchasers respectively all the right, title, and interest and claim of any of the parties to this suit in or to said section twenty-one (21) and as an extinguishment and discharge of any right or claim of lien thereon, as trustee or otherwise, on the part of said Barling, Mandell, or Edward H. Green.

And it is further ordered that if upon the sale to be made in pursuance of this decree said section twenty-one (21) shall not produce the sum of six hundred thousand dollars, said bill of complaint shall be dismissed at complainants' costs, without prejudice to his right to enforce said indebtedness so due to him, but not against said section twenty-one as under the pledges to said bank so made as aforesaid by said Robert W. Hyman."

That thereupon the defendants in said cause took an appeal from the decree of said cause to the supreme court of the State of Illinois, by which court the decree in said cause was affirmed, and the order of the said supreme court affirming said cause was thereafter duly filed in said circuit court of Cook county, and it was there-
23 upon by said court ordered that said decree be executed, and that thereafter, in pursuance of said decree, George Bass, one of the masters of said circuit court, sold said premises at public vendue and the said premises were bought off at said sale by the defendants George M. Bogue, Henry W. Hoyt, and Hamilton B. Bogue, who were doing business as real-estate brokers in said city of Chicago under the firm name of Bogue & Hoyt, for the sum of six hundred and two thousand dollars ($602,000); which sale was thereafter, to wit, on the 15th day of February, A. D. 1890, confirmed by said court.

Your orators further represent that the said firm of Bogue & Hoyt for several months prior to said sale had been and were in the employment of said Peters to find purchasers for said premises upon said contemplated sale by the master in pursuance of said decree; that the said firm of Bogue & Hoyt in pursuance of their said em-

ployment opened negotiation with the defendant Williard T. Block and procured from said Block an agreement to purchase said premises through the said Bogue & Hoyt for some sum unknown to your oratrix, but which your orators charge to have been a sum in excess of $760,912.26; that thereupon the said Bogue & Hoyt and the said Peters secretly and unknown to your orators made and entered into an agreement in words and figures as follows:

"*Memorandum.*

William H. Peters as receiver of the Exchange National
24 Bank of Norfolk, Virginia, and Bogue & Hoyt, do hereby agree, as follows:

First. The said Peters receiver agrees to sell to Bogue & Hoyt, all right, title and interest and claim which he now has in or to the decree entered on the 9th day of April, 1888, in the circuit court of Cook county in case No. 62375, entitled William H. Peters, receiver, etc., *vs.* Robert W. Hyman Jr. administrator, etc. *et al.* and which amounts to $83,426.35 with interest from the entry of said decree, no payment having been made thereon.

Second. The said Bogue & Hoyt agree to pay the said Peters receiver, therefor the sum of $83,426.35 with interest from the 9th of April 1888 at the rate of six per cent. per annum, of which sum $2,000.00 have been paid and the receipt thereof is hereby acknowledged. The remainder is to be paid as soon as the sale to be made in pursuance of said decree shall have been confirmed by the circuit court of Cook county.

Third. It is understood that unless said Bogue & Hoyt or a member or representative of said firm shall become the purchaser of section 21, township 39 north range 13 east of the third principal meridian, at such sale and the premises shall be struck off to them and such sale afterwards confirmed by said court, this agreement shall not be binding upon either of the parties hereto and the sum of money paid as aforesaid on account of said purchase shall be returned to said Bogue & Hoyt.

Fourth. In order to secure said property Bogue & Hoyt
25 agree to bid up to the sum of $760,912.26 or so much as may be necessary to have the same struck off to said firm or its representatives, it being understood that said firm shall not be required to bid a larger sum in any event, than last-mentioned sum.

Fifth. It is understood that time shall be of the essence of this agreement and that upon payment of the full sum to be paid to said Peters, receiver, he shall execute and deliver to said Bogue & Hoyt any instrument or instruments of writing which shall reasonably be devised or required for the purpose of giving effect to this agreement in carrying out the intent thereof.

Witness the hands of said parties this 20th day of December, 1889.

(Signed) WILLIAM H. PETERS,
Receiver of the Exchange National Bank of Norfolk, Va.,
By SMITH & PENCE.
(Signed) BOGUE & HOYT."

That the amount computed to the date of said agreement due the said Robinson estate was $575,568.42, and the amount due said Peters as such receiver was $91,921.92.

That said two amounts, together with the same amount that would be coming to Peters being added as coming to the Robinson estate in pursuance of the foregoing stipulation, would amount to $759,412.26; that the master's fees amounted to 1,500.00, and the total amount was $760,912.26, the same amount mentioned in said last-mentioned contract, and that by bidding the premises up to said amount, as provided in said contract, there would come
26 out of said bid to the said Robinson estate the sum of $91,921.92, in addition to said $575,568.42, as the one-half provided in the foregoing stipulation, to which said estate was entitled, but that, on the basis of said bid, the entire amount coming to said estate would not exceed the sum of $12,465.79; that after the foregoing agreement was made between said Peters and the said Bogue & Hoyt the said Peters and the said Bogue & Hoyt fraudulently and secretly entered into a verbal stipulation, as your orators are informed and believe, by which it was agreed or consented to on the part of said Peters that the said Bogue & Hoyt need not bid said premises higher than the said $602,000.00, provided said Bogue & Hoyt would pay to the said Peters the said sum of $91,921.92, and that, in pursuance of said secret and fraudulent arrangement, the said premises were, in fact, bid off by the said Bogue & Hoyt at said sum of $602,000.00.

Your orators, however, charge the fact to be that said purchase was made in the interest of the said Williard T. Block, who, on his own account or on account of parties whom he may represent, which are unknown to your orators, furnished the amount so paid, and also the amount so to be paid, to the said Peters; that in truth and in fact the amount at which said premises were purchased by the said Bogue & Hoyt, either in their own right or for the said Block, was and is in addition to the said $602,000.00 the further sum of $91,921.92, or, at all events, such further sum as would make in addition to the half interest which said Peters would have in the surplus of the proceeds of the sale, being one-half,
27 would amount to the said sum of $91,921.92, and your orators charge that the said defendants, George M. Bogue, Henry W. Hoyt, and Hamilton W. Bogue, fraudulently colluded and combined with the said Peters and with the said Williard T. Block to secrete from your orator, the said Hetty H. R. Green, and from the said trustees and the executors under the will of said Robinson above mentioned the fact that any sum in addition to the amount of said bid was to be paid on account of the purchase of said property; that by means of such secret combining, all of which was unknown to your orators, the said George M. Bogue, Henry W. Hoyt, and Hamilton B. Bogue have paid over to the said Peters the said sum of $91,921.92 or are to pay the sum to the said Peters, or that said sum of money is in their hands or in the hands of Geo. W. Smith & Abram Pence, who are attorneys of the said William H. Peters, but that said sum of money, whether in the hands of

said attorneys or in the hands of the said George M. Bogue and Henry W. Hoyt and Hamilton W. Bogue or in the hands of the said Williard T. Block, *are* in fact a part of the consideration moneys of said sale over and above the said bid of $602,000.00, which said sum of money ought to be divided equally between the said Peters and the said Robinson estate, the said Robinson estate under the foregoing stipulations being entitled equitably to one-half thereof.

That your orators, being uninformed, cannot state the precise terms of the agreement between the said Peters, the said
28 Bogue & Hoyt, and the said Block or some of them by which said moneys were to be withheld from the said Robinson's estate, nor can your orators state into whose particular hands the said moneys are at the time of the filing of this bill, nor can they state the facts, nor can they be fully ascertained without discovery from the said parties, but your orators charge and aver on information and belief that said moneys are in the hands of some one of the parties above mentioned, and that, wherever the same may be, *that* they are and ought to be charged with a trust in favor of the trust represented by the above-mentioned trustees, and that all of said parties know that the said moneys are in fact a part of the proceeds of the sale of said lands and had notice from the beginning and all the way through the proceedings by which the same were obtained that they were effected with a trust in favor of said trust estate, being the trust above set forth, created by said last will and testament of Edward Mott Robinson.

Your orators further represent that the said trustees, excepting the said Edward H. Green, are unfriendly to your oratrix, the said Hetty H. R. Green, the *cestui que trust.* of the estate represented by said trustees, and that the said defendants, Henry A. Barling and Edward D. Mandell, cotrustees with the said Edward H. Green, are unwilling to join in this bill as co-complainants, and are therefore made defendants herein.

Wherefore your orators, being without adequate remedy
29 by proceedings at law, bring this their bill in equity, where such matters are properly cognizable and relievable, and pray that the said William H. Peters, George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, Williard T. Block, Henry A. Barling, and Edward D. Mandell, trustees as aforesaid, and George W. Smith and Abram Pence may *me* made defendants hereto and required to answer this bill, but not under oath, their answers and the answer of each of them under oath being hereby expressly waived, and that the said William H. Peters, George M. Bogue, George W. Hoyt, Hamilton B. Bogue, and Williard T. Block, George W. Smith, & Abram M. Pence may make discovery as to all the contracts, agreements, arrangements, and understandings between them or any two of them in regard to the purchase of said premises, whether at the said master's sale or with reference to the final adjustment with the said Peters and as between each other, and that, the premises being considered, the said sum of $91,921.92, or whatever sum is to be paid to the said Peters or has been received by said Peters from the sale of said premises or on account of his interest in said premises,

or the trust or right assigned to or hypothecated with the said Exchange National Bank of Norfolk, Virginia, and which came into the hands of said Peters as receiver of said bank, may be decreed to be held in trust to the extent of one-half thereof for the benefit of the said trustees representing the trust created by said will of the said Edward Mott Robinson and of your oratrix, the said
30 Hetty H. R. Green, as *cestui que trust.* in the said will, and that such of said defendants as may have said moneys or funds in their hands may be decreed to account for one-half thereof and to pay the same over to the said trustees representing said fund for the benefit of their said trust and of your oratrix, Hetty H. R. Green, as *cestui que trust.* to said estate, and that your orators may have such further and other relief in the premises as may be conformable to equity, and may your honors grant the usual writ of subpœna or summons, directed to the marshal of said district and commanding him to summon said defendants to answer this bill according to the due course of practice in this court.

HETTY H. R. GREEN,
EDWARD H. GREEN, *Compl'nts,*
By BISBEE, AHRENS & DECKER,
Compl'nts' Sol'rs.
E. W. WINTER.

BISBEE, AHRENS & DECKER, *Of Counsel.*

31 STATE OF ILLINOIS, } *ss:*
Cook County, }

L. H. Bisbee, agent & attorney for Hetty H. R. Green, being duly sworn, doth depose and say that he has heard read the foregoing bill and knows the contents thereof; that the same is true of his own knowledge excepting as to the matters therein set forth on information and belief, and that as to those matters he believes it to be true.

L. H. BISBEE.

Subscribed and sworn to before me this 15th day of February, 1890.

[NOTARIAL SEAL.] FREDERICK A. ROOT,
Notary Public.

(Endorsed:) Filed Feb'y 15, 1890. Wm. H. Bradley, clerk.

32 On the same day, to wit, on the fifteenth day of February, 1890, there issued out of said clerk's office a writ of subpœna in said entitled cause; which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

The United States of America to George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, Abram M. Pence, Willard T. Block, Henry A. Barling, Edward D. Mandall, and William H. Peters, Greeting:

We command you and every of you that you appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at Chicago, in the northern division of said district, on the first Monday in the month of April next to answer the bill of complaint of Hetty H. R. Green and Edward H. Green, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the northern district of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America,
33 [SEAL.] at Chicago aforesaid, this 15th day of February, in the year of our Lord one thousand eight hundred and ninety, and of our Independence the 114th year.

WM. H. BRADLEY, *Clerk.*

Memorandum.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable the complainants' bill will be taken against them as confessed and a decree entered accordingly.

WM. H. BRADLEY, *Clerk.*

Marshal's Return.

I have served the within writ within my district in the following manner, to wit: Upon George M. Bogue, therein named, on the 15th day of February, A. D. 1890; also upon Hamilton B. Bogue, therein named, on the 15th day of February, A. D. 1890; also upon George W. Smith, therein named, on the 15th day of February, A. D. 1890; also upon Abram M. Pence, therein named, on the 15th day of February, A. D. 1890; also upon Willard T. Block, therein named, on the 15th day of February, A. D. 1890, by personally delivering to each of them a true copy of the same on the aforesaid day. I also served the same upon the following-named defendant,
34 not having been able to find him to serve personally, by leaving a true copy for him at his usual place of abode with

an adult person and a member of his family, to wit: Upon Henry W. Hoyt, on the 15th day of February, A. D. 1890, with Mary Coleman. I did not serve Henry A. Barling, Edward D. Mandall, & William H. Peters, having been unable to find them or that they had any residence within my district.

FRANK HITCHCOCK,
U. S. Marshal,
By GEO. N. JONES, *Deputy.*

(Endorsed:) Filed Feb'y 19, A. D. 1890. Wm. H. Bradley, clerk.

35 Afterward, to wit, on the third day of April, 1890, came George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, Abram M. Pence, and Willard T. Block, by their solicitors, and filed in said clerk's office their plea in said entitled cause; which said plea is in the words and figures following, to wit:

Plea.

In the Circuit Court of the United States for the Northern District of Illinois.

HETTY H. R. GREEN and EDWARD H. GREEN *vs.* GEORGE M. BOGUE, HENRY W. HOYT, HAMILTON B. Bogue, George W. Smith, Abram M. Pence, Willard T. Block, Henry A. Barling and Edward D. Mandell, as Trustees, and William H. Peters, as Receiver of the Exchange National Bank of Norfolk, Virginia.	In Chancery.

The joint and several plea of George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, Abram M. Pence, and Willard T. Block, six of the defendants, to the bill of complaint of Hetty H. R. Green and Edward H. Green, complainant-.

36 These defendants, by protestation, not confessing or acknowledging the matters and things in and by said bill set forth and alleged to be true in such manner and form as the same are thereby and therein set forth and alleged, for plea to the said bill say that as to the suit mentioned in said bill and brought by the said Peters as such receiver in the circuit court of Cook county, in the State of Illinois, the said Hetty H. R. Green and said Henry A. Barling, Edward D. Mandell, and Edward H. Green, with others, were made parties defendant; that the said Hetty H. R. Green and Edward H. Green appeared by counsel and filed their answer in said circuit court of Cook county to said bill, and the said Barling and Mandell also appeared by counsel and filed their answer to said bill; that said cause was heard in due course by said circuit court of Cook county, and on the 9th day of April, A. D. 1888, a decree was entered therein; that from said decree the said

complainants and said Barling and Mandell prayed an appeal to the appellate court of the State of Illinois for the first district, which was allowed; that said appeal was perfected, docketed in and heard by said appellate court, and the decree of the circuit court was duly affirmed; that from the order or judgment of affirmance so made by said appellate court the said complainants and said
37 Barling and Mandell prayed an appeal to the supreme court of the State of Illinois, which was allowed; that said appeal was perfected, docketed in and heard by said supreme court, and, by an order or judgment entered by said supreme court on the 15th day of June, 1889, the judgment aforesaid of the appellate court was in all things affirmed.

That afterwards and in compliance with the decree so entered by the circuit court of Cook county on the 9th day of April, 1888, due and sufficient notice of sale having been given, George Bass, one of the masters in chancery of said circuit court of Cook county, sold the premises in said bill described to the defendant George M. Bogue for the sum of six hundred and two thousand dollars ($602,000); that said Bass filed in said circuit court on the 10th day of January, 1890, his report of such sale, and on the same day it was ordered by said circuit court of Cook county that all parties who should desire to object to said report should file their objections within five days from that date; that on the 15th day of January, 1890, the said Barling, Mandell, and Edward H. Green, as trustees, together with Robert W. Hyman, Jr., as administrator, filed objections to said report and a petition praying that said sale
38 should be set aside, and in and by said objections and petition it was, among other things, alleged that the said George M. Bogue was not the real or a *bona fide* purchaser under said decree, nor was the sum of six hundred and two thousand dollars the entire purchase-money agreed to be paid for the premises so sold; that, on the contrary, the said Bogue, although publicly bidding the said sum of six hundred and two thousand dollars as and for the entire purchase-money of said premises, made such bid under and in accordance with a secret and collusive understanding with said Peters as receiver to allow said receiver out of the actual purchase-money of said premises to be paid by said Bogue a further sum of money sufficient to satisfy the claim of said receiver and interest up to the date of the sale, to wit, the sum of ninety-one thousand nine hundred and twenty-one dollars and ninety-two cents, and that the said receiver had abused the process of the court and availed himself of the saleable value of said land under said decree and secretly sold the same for a sum greatly in excess of the sum of six hundred and two thousand dollars reported by said master.

That on the 17th day of January, 1890, said Peters as receiver and said Bogue filed their answer in said circuit court of
39 Cook county to said objections and petition; that in said answer all fraud and conspiracy was denied, and it was, among other things, set up that said objectors had not offered to bid any sum upon a resale; that affidavits in support of said objections and petition, in which, among other things, the so-called

memorandum which is set out in said bill of complaint herein was set forth, and affidavits in support of said answer of said Peters and said Bogue were duly filed in said circuit court of Cook county.

That afterwards a hearing was had by said circuit court of Cook county upon said objections and petition and the answer thereto, and on the 17th day of February, 1890, a decretal order was entered in said cause, which, omitting the title, was in the words and figures following, to wit:

"On reading the report of George Bass, one of the masters in chancery of this court, heretofore filed herein, and the objections to the confirmation of the sale so reported by said master, and the petition praying that sale be set aside, filed herein on behalf of Henry A. Barling as executor under the last will and testament of Edward Mott Robinson, deceased, Henry A. Barling, Edward D. Mandell, Edward H. Green as trustees under the will of said Robinson, and Robert W. Hyman, Jr., as administrator of the estate
40 of Robert W. Hyman, deceased, by Paddock & Wright, their solicitors, said objections and petition being in writing, and on reading the affidavits filed herein in support of said objections and said petition and counter-affidavits filed on behalf of the complainant, as well as the exhibits attached to all such affidavits, and also the answer of the complainant and George M. Bogue to said objections and petition, and said Edward H. Green, as trustee, having withdrawn his appearance as an objector herein; after hearing Messrs. Paddock & Wright and Newton A. Partridge, of counsel for said Henry A. Barling, as executor, said Henry A. Barling and Edward D. Mandell, as trustees, and said Robert W. Hyman, as administrator, and also George W. Smith, Abram M. Pence, and David B. Lyman, of counsel for the complainant herein, William H. Peters, as receiver, and said Bogue, and the court, being now fully advised in the premises, doth order, adjudge, and decree that the said report of the said master be, and the same is hereby, approved and confirmed, and the sale of the premises described in the decree entered herein on the 9th day of April, A. D. 1888, to George M. Bogue for the sum of six hundred and two thousand dollars ($602,000) is in all respects approved, ratified, and confirmed;
41 and it appearing that twenty per cent. of said sum of money has been paid by said Bogue to the master, in accordance with the terms of said decree—

It is further ordered, adjudged, and decreed that upon the payment to said master by said Bogue of the remainder of the price bid by him for said premises, such remainder being four hundred and eighty-one thousand six hundred dollars ($481,600), such payment to be made before the expiration of twenty-five days from the date of the entry of this decretal order, said master shall execute and deliver to said Bogue a deed of said premises in conformity with the terms of said decree.

And it is further ordered by the court that the amounts asked to be allowed by the master in his said report for his charges and disbursements and expenses of sale be, and the same are hereby, allowed, and said master is authorized to retain the same from the

moneys which have come or shall come into his hands and also to pay out of such moneys any costs of this suit which may remain unpaid.

And the said master, upon delivering said deed and after payment of the charges, disbursements, costs, and expenses as aforesaid, is directed to pay to the said Henry A. Barling, as executor aforesaid, or to Paddock and Wright, his solicitors, out of such moneys, being the net proceeds of said sale, the sum of
42 five hundred and five thousand four hundred and fourteen dollars and six cents ($505,414.06), with interest thereon from January 1st, 1888, to April 9th, 1888, at seven per cent. per annum, and interest on the amount of such principal and interest from April 9, 1888, to February 11, 1890, the date of the entry of this decree, at the rate of six per cent. per annum; also to said Barling, as such executor, or his said solicitors the further sum of eight thousand and twenty-eight dollars and thirty-nine cents ($8,028.39), being for taxes paid under authority of this court since April 9, 1888, with interest thereon.

And that he pay to said Barling, as executor, or his said solicitors one-half of the remaining proceeds of such sale, and that he pay to the solicitors for the complainant the other one-half.

In case the purchaser at the sale under said decree shall fail to pay the unpaid part of said purchase-money so bid by him at said sale in full to said George Bass, master of this court, within the said time so fixed for the payment thereof, the said sale shall thereupon be set aside and a resale had of said premises upon terms to be settled by the court, with liberty to the parties to apply.

And thereupon the said Henry A. Barling, as such ex-
43 ecutor, said Barling and Mandell, as trustees, and said Hyman, as administrator aforesaid, jointly and severally pray an appeal to the supreme court of this State, and such appeal is allowed by the court as so prayed upon the filing of an appeal bond, conditioned according to law, in the penal sum of one hundred thousand dollars to the said William H. Peters, receiver, and George M. Bogue, with surety to be approved by the court, within twenty days from the date of entry of this decree, and twenty days is allowed for filing a certificate of evidence.

And this cause having been heard at the January term, 1890, of this court, and the parties complainant and defendant, purchaser and objectors, having, by their respective solicitors, agreed at such term, in open court, that such order or decree as this court should enter herein should be entered as of said term and of the date of February 11, 1890, it is accordingly ordered that this decree be entered and have effect *nunc pro tunc* as of the 11th day of February, 1890."

And these defendants further say that a writ of error was afterwards sued out of the supreme court of the State of Illinois by the said Barling, Mandell, and Hyman to review the said last-mentioned decretal order; that the said Peters as receiver and said Bogue
44 were made defendants to said writ of error and entered their appearance in said supreme court at the March term, 1890, thereof; that said cause was duly docketed at said March term of

said supreme court, argued, submitted to and taken by said court, and is now pending therein under advisement; that the said Bogue has paid to said Bass the sum of four hundred and eighty-one thousand six hundred dollars mentioned in said decretal order and said Bass has executed and delivered to R. Suydan Grant, the assignee of said Bogue, a deed of said premises.

These defendants further say that the said circuit court acquired and had jurisdiction of the subject-matter of the suit which was pending before it and of the parties thereto, the said complainants being among the parties, as hereinbefore stated; that the said Hetty H. R. Green, in respect to the issues sought to be raised in this suit, being a party to said suit in the circuit court of Cook county, is bound by the orders and decrees of that court, and that the subject-matter of this suit has already been determined and adjudicated by the said circuit court of Cook county and this court has no jurisdiction thereof; all which matters and things these defendants do aver to be true and they plead the said proceedings, orders,
45 and decrees of the circuit court of Cook county in bar to the said bill of the complainants and pray the judgment of this honorable court whether they ought to be required to make any other or further answer to the said bill, and to be hence dismissed with their costs in this behalf sustained.

And, for answer to those parts of said bill which charge fraud or combination, these defendants say that they deny each and every of such charges of fraud and combination; and these defendants deny that after the agreement in said bill set forth and entitled "memorandum" was made and executed or at any time said Peters and the firm of Bogue & Hoyt, mentioned in said bill, or either of the members thereof, fraudulently or secretly entered into a verbal stipulation by which it was agreed or consented to on the part of said Peters that the said Bogue & Hoyt need not bid said premises higher than the sum of six hundred and two thousand dollars provided said Bogue & Hoyt would pay to the said Peters the sum of $91,921.92 or any part thereof.

They also deny that, in pursuance of such agreement or arrangement, the said premises were, in fact, bid off by the said Bogue & Hoyt or either of the members of said firm at said sum of $602,000.

They deny that the amount for which said premises were purchased at the said sale so made by said George Bass as master
46 in chancery was, in addition to the sum of $602,000, the further sum of $91,921.92 or any sum whatever.

They also deny that the said George M. Bogue, Henry W. Hoyt, and Hamilton B. Bogue or either of them combined or colluded with said Peters or with said Block to secrete from the complainant Hetty H. R. Green or from the trustees under the will of Edward Mott Robinson the fact that any sum in addition to said bid was to be paid on account of the purchase of said property.

They also deny that by means of such secret combining the said George M. Bogue, Henry W. Hoyt, and Hamilton B. Bogue have paid to the said Peters the sum of $91,921.92 or any sum whatever or are to pay any such sum to said Peters; they deny that any such

sum is in the hands of any of the defendants to this suit; and they further deny that there is any sum over and above the said sum of $602,000 in the hands of any person or which is to be paid by any person under any understanding or agreement that is or could be taken to be a part of the consideration money of said sale.

They deny also that there are any moneys in the hands or control of any of the defendants to this suit, excepting the defendants Barling and Mandell, which should be charged with a trust in favor of said Barling or Mandell as trustees of the complainants in
47 this suit.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, and pray to be dismissed with their costs in this behalf sustained.

SMITH & HARLAN,
LYMAN & JACKSON,
Solicitors for Defendants Bogue, Hoyt, Block, Smith, & Pence, & of Counsel.

I certify that the foregoing plea is, in my opinion, well founded in law.

GEO. W. SMITH, *Of Counsel.*

UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, }

George W. Smith, being duly sworn, says that he is one of the defendants named in the foregoing plea and answer; that he has read the said plea and answer and knows the contents thereof, and that the same are true in substance and in fact and has not been interposed for purposes of delay.

GEO. W. SMITH.

Subscribed and sworn to before me this 10th day of April, A. D. 1890.

E. A. DRUMMOND, *U. S. Com.*

(Endorsed:) Filed Ap'l 3, 1890. Wm. H. Bradley, clerk. Refiled April 10, 1890. Wm. H. Bradley, clerk.

48 Afterward, to wit, on the eleventh day of April, in the adjourned March term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

HETTY H. R. GREEN *et al.*
vs.
GEORGE M. BOGUE *et al.* } In Chancery.

Now come the parties, by their solicitors, and this cause comes on to be heard upon the joint and several plea of George M. Bogue,

Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, Abram M. Pence, and Willard T. Block to the bill herein, which said plea was filed on the third instant, and after hearing the arguments of counsel the court sustains said plea.

49 Afterward, to wit, on the twelfth day of April, 1890, came the complainants, by their solicitors, and filed in said clerk's office their replication in said entitled cause; which said replication is in the words and figures following, to wit:

Replication.

In the Circuit Court of the United States for the Northern District of Illinois.

HETTIE H. R. GREEN and EDWARD H. GREEN, Complainants,
vs.
GEORGE M. BOGUE, HENRY W. HOYT, HAMILTON B. BOGUE, George W. Smith, Abram M. Pence, and Willard T. Block, Henry A. Barling and Edward Mandell, as Trustees, and Wm. H. Peters, as Receiver of the Exchange National Bank of Norfolk, Virginia.

The replication of Hettie H. R. Green and Edward H. Green, complainants, to the joint and several plea and answer of George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, Abram M. Pence, and Willard T. Block, defendants to the bill of complaint herein.

These repliants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insuffi-
50 ciencies of the said answer, for replication thereunto say that they will aver and prove this said bill to be true, certain, and sufficient in the law to be answered unto, and that the said pleas—answer of the defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in the said plea and answer contained material or effectual in law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by *his* said bill *he* has already prayed.

BISBEE, AHRENS & DECKER,
Sol's for Complainants.

(Endorsed:) Filed Ap'l 12, 1890. Wm. H. Bradley, clerk.

51 Afterward, to wit, on the fourteenth day of April, in the adjourned March term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Walter Q. Gresham, circuit judge, is the following entry, to wit:

Order.

HETTY H. R. GREEN *et al.*
vs.
GEORGE M. BOGUE *et al.* } In Chancery.

On motion, it is ordered that this cause be referred to Henry W. Bishop, master in chancery, to take proof on the plea herein and report the same to the court with his findings thereon.

52 Afterward, to wit, on the eleventh day of October, in the adjourned October term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Decree.

HETTY H. R. GREEN and EDWARD H. GREEN
vs.
GEORGE M. BOGUE *et al.* } In Chancery.

This cause coming on to be heard upon the report of Henry W. Bishop, one of the masters of this court, to whom it was referred to take proofs as to the truth of the plea of the defendants, George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, Abram M. Pence, and Willard T. Block, and report the same with his findings thereon to this court, and upon the exceptions by said complainants to said report, and after hearing counsel for the complainants and the defendants aforesaid, it is by the court ordered, adjudged, and decreed—

First. That the exceptions of said complainants to said report be, and the same are hereby, overruled, and said report is in all things approved, ratified, and confirmed.

Second. That the bill of complaint be, and the same is hereby, dismissed at the cost of the complainants. The complainants
53 pray an appeal from the foregoing order and decree to the Supreme Court of the United States, which is allowed upon the filing of a certificate of evidence within twenty days and an appeal bond, to be approved by this court, in the sum of one thousand dollars, conditioned as provided by law.

54 Afterward, to wit, on the thirtieth day of October, 1890, there was filed in said clerk's office a stipulation in said entitled cause; which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the Circuit Court Thereof.

HETTY H. R. GREEN *et al.* *vs.* GEORGE M. BOGUE *et al.* } In Chancery. Gen. No., 21550.

It is hereby stipulated and agreed that the time for the complainants to present their certificate of evidence in the above-entitled cause be extended to November 10, 1890, inclusive.

Dated October 29, 1890.

BISBEE & AHRENS,
Complainants' Solicitors.
SMITH & HARLAN,
Defendants' Solicitors.

(Endorsed:) Filed Oct. 30, 1890. Wm. H. Bradley, clerk.

55 Afterward, to wit, on the tenth day of November, 1890, came the complainants, by their solicitors, and filed in said clerk's office their certificate of evidence in said entitled cause; which said certificate of evidence is in the words and figures following, to wit:

Certificate of Evidence.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

In the Circuit Court Thereof.

HETTY H. R. GREEN and EDWARD H. GREEN *vs.* GEORGE M. BOGUE, HENRY W. HOYT, HAMILTON B. Bogue, George W. Smith, and Willard T. Block, Henry A. Barling and Edward D. Mandell, Trustees, and William H. Peters, Receiver of the Norfolk National Bank of Virginia. } In Chancery.

Be it remembered and certified that on the final hearing of this cause, at this the October term, A. D. 1890, of this court, upon the bill of complaint herein, upon the plea of the defendants George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, Abram M. Pence, and Willard T. Block, and upon the replication of said complainants to said plea, the said defendants,

56 to establish the truth of the said plea, offered and read in evidence the following, to wit:

1. A certified transcript of the record in a certain cause lately pending in the circuit court of Cook county, Illinois, on the chancery side thereof, between William H. Peters, receiver, etc., complainant, and Robert W. Hyman, Jr., adm'r, etc., *et al.*, defendants, filed herein May 24, 1890, which is in the words and figures following, to wit:

57

H. H. R. GREEN *et al.*
vs.
G. M. BOGUE *et al.*
} 1041, 21550.

WM. H. PETERS, Receiver, &c.,
vs.
ROBERT W. HYMAN, JR., *et al.*
} 62375.

Transcript of Proceedings.

UNITED STATES OF AMERICA.

STATE OF ILLINOIS, } ss:
County — Cook, }

Pleas before the Honorable L. C. Collins, Jr., one of the judges of the circuit court of Cook county, at a term thereof begun and held at Chicago, in said county and State, on the third Monday (being the 20th day) of January, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States the one hundred and fourteenth.

Present: Honorable L. C. Collins, Jr., one of the judges of the circuit court of Cook county, State of Illinois; J. M. Longnecker, State's attorney; Canute R. Matson, sheriff.

58

Attest: HENRY BEST, *Clerk.*

Be it remembered that heretofore, to wit, on the 29th day of August, A. D. 1887, William H. Peters, receiver, etc., by Smith & Pence, his solicitors, filed in said court his certain bill of complaint and bond for costs and caused to be issued out of and under the seal of said court the people's writ of *suppons*, directed to the sheriff of Cook county to execute; which said bill and writ, with the sheriff's return thereon endorsed, are in the words and figures following, to wit:

In the Circuit Court of Cook County.

To the judges of said court, in chancery sitting:

Your orator, William H. Peters, receiver of the Exchange National Bank of Norfolk, Virginia, respectfully represents—

That he was duly and legally appointed receiver of said bank on or about the 15th day of May, 1885.

That as such receiver all the assets of every description of said bank lawfully came into his possession, and that he now holds and

is entitled to collect and enforce the same; that on or about the 20th day of June, 1864, a certain contract or agreement was entered into between Edward Mott Robinson, then of the city of New York, and Robert W. Hyman, then of the city of Chicago, a copy of which said contract is in the words and figures following, to wit:

Whereas, Robert W. Hyman has purchased the undivided
59 half of section twenty-one (21) township thirty-nine (T. 39) north range thirteen (13) east of the third principal meridian, in Cook county, Illinois, for the joint account of himself and Edward Mott Robinson, of the city of New York, for the sum of fifteen thousand ($15,000) dollars, upon the term- of six thousand ($6,000) dollars cash down and the residue in two equal instalments of forty-five hundred dollars each, payable respectively at any time within twelve and eighteen months from the 26th day of April, 1864, according to the tenor of two certain notes of that date secured by deed of trust, on said premises, it being recited therein, and in said notes that said Hyman shall have the privilege of paying each of them at the Merchants' Savings Loan and Trust Co.'s bank in Chicago, at any time before maturity, and that interest shall cease ten days after such payment into bank and,

Whereas, the said Edward Mott Robinson, hath advanced to said Hyman the said sum of six thousand dollars for said cash payment, and doth take the title to said lands, subject to said deferred payments, and to make the same by way of advance if it shall be necessary or expedient so to do hereafter, and to pay taxes thereon by way of advance.

Now therefore, this agreement witnesseth, and it is hereby mutually agreed by and between the said Edward Mott Robinson and the said Robert W. Hyman as follows: to wit:

First. Said Hyman shall sell said premises within one year from date hereof, unless otherwise agreed between the parties hereto, and shall make no charge for buying, selling or attending to the payment of taxes on the premises:

60 Second. Said Robinson shall advance all such moneys as may be required to pay taxes and deferred payments on said lands before sale and conveyance, so far as may be necessary so to do.

Third. Upon the sale of said premises the proceeds shall be distributed as follows: (1st) said Robinson shall be reimbursed all moneys advanced, and to be advanced on said premises by him with interest at the rate of seven per cent. per annum, (2nd) the balance of the proceeds of such sale shall be equally divided between the respective parties hereto, (3d) on account of sales and of proceeds shall be made and rendered by said Hyman to said Robinson within ten days after such sale is made, if made by said Hyman.

Fourth. And the said Robert W. Hyman, for himself, his heirs, executors, administrators and assigns, doth covenant and agree hereby to and with the said Edward Mott Robinson, his heirs and assigns, that whenever sale is made of said premises, that he, the said Robinson or his heirs or assigns, shall in any event be reim-

bursed the full amount of all advances made and to be made on said lands, with interest thereon at the rate of seven per cent. per annum.

In witness whereof, we, the said Edward Mott Robinson, and the said R. W. Hyman, hereby bind ourselves, our heirs and assigns to the foregoing agreement and set our hands and seals.

New York, June 20th, 1864.

EDWARD MOTT ROBINSON. [SEAL.]
R. W. HYMAN. [SEAL.]

Witness to both:
WM. E. WATSON.

61 That on or about the 14th day of June, 1865, said Robinson died in the city of New York, testate, seized of the legal title to the premises in said agreement described, subject to the equitable right of said Hyman therein; that by his will, which was thereafter and on or about the 30th day of June, 1865, duly admitted to probate before the surrogate of the county of New York, in the State of New York, he devised said premises to Henry A. Barling, Abner H. Davis, and Edward D. Mandell, as trustees, to hold to them and to the survivors of them upon certain trusts therein expressed.

That on or about the 24th day of September, 1867, a certain other contract or agreement was entered into between said Henry A. Barling and Abner H. Davis, as executors and trustees of the estate of said Robinson, and said Robert W. Hyman, which is in the words and figures following:

Whereas, Edward Mott Robinson (since deceased) and Robert W. Hyman, who were parties to the agreement of which the foregoing is a copy did also agree that the remaining undivided half of section twenty-one (21) township thirty-nine (39) north range thirteen (13) east of the third principal meridian in Cook county, Illinois, should be purchased at the price of seventeen thousand and fifty (17,050) dollars for their joint account and benefit in all respects, on the same terms as specified in the foregoing instrument.

And whereas, at the time such purchase was consum-ated, said Edward Mott Robinson had deceased and the title for said additional purchased interest of one-half of said section was at the time namely, about the 24th day of June 1865 conveyed to the undersigned Henry A. Barling and Abner H. Davis, executors of
62 Edward Mott Robinson by whom the purchase-money paid was advanced.

Now this memorandum witnesseth, in pursuance of the agreement made between said Hyman and said Robinson in his lifetime, that the said last-purchased undivided half of said section is held by the said Henry A. Barling and Abner H. Davis, as executors as aforesaid, upon like terms and conditions, so far as respects the share and interest of said Hyman in the profit or loss to result from said purchase as the said undivided half first purchased was held by said Edward Mott Robinson under the said foregoing agreement of

June 20th, 1864, and said Hyman agrees in like manner as he did in respect of the first purchase that the said executors shall be reimbursed the amount of all advances they have made or shall make for or in respect of said last purchased half, with interest thereon at the rate of seven per cent. per annum.

And it is further understood and agreed between the parties that in respect of both said parcels or undivided halves purchased as aforesaid, the executors of or trustees under the last will and testament of Edward Mott Robinson have the right at any time or from time to time in their discretion to sell the whole or any part or parts of said premises for such price as they may deem expedient and said Hyman shall be bound by the re-ults of such sale, it is,

Further agreed in respect of both said purchases that if, within one year from this date there shall not have been enough received from sales of said premises to reimburse said Robinson's estate for his and its advances with interest, the executors in making
63 up their eventual account for reimbursement of the estate for its advances and interest shall be entitled to state the account of advances computed with interest up to the end of a year from this date, the whole principal and interest drawing interest from that time, and so from that time forth state the account with annual rests adding in the accrued interest, provided always that in case of a loss instead of a profit accruing on the purchase, such annual rests shall not be made but simple interest only for the whole time without rests shall be charged.

In witness whereof, the said parties have hereunto set their hands and seals the 24th day of September, (1867) eighteen hundred and sixty-seven.

HENRY A. BARLING, *Ex.* [SEAL.]
A. H. DAVIS, *Ex.* [SEAL.]
ROBERT W. HYMAN. [SEAL.]

WILLIAM E. WATSON,
As to all.

That under and by virtue of the agreements aforesaid large sums of money have been advanced by said Robinson and his executors and trustees for the purposes in said agreements specified, but as to the amount of such advances your orator is not informed.

He states, however, that whatever sums were so advanced are secured by the premises described in said agreements; that said Barling and Mandell and Edward H. Green, as successors in trust and trustees under the will of said Robinson, now hold the legal title to said lands as security for the repayment of such advances, and that Hetty H. R. Green has the beneficial interest under said will in the title and interest so remaining in said trustees.

That said Robert W. Hyman died intestate on or about
64 the 15th day of May, 1885, and at the time of his decease was the owner of the equitable estate in and to an undivided half of said section twenty-one, subject to the charge so created by said agreements for the repayment of one-half of the advances made by virtue thereof by said Robinson and his executors and trustees.

That said Hyman in his lifetime became indebted to said Exchange National Bank of Norfolk in large sums of money, the unpaid portions of which afterwards came to be represented by four certain promissory notes for the sum of $25,000 each, a copy of one of which said notes is as follows:

$25,000. NORFOLK, VA., *June 24th*, 1884.

Twelve months after July 5, 1884, we promise to pay to the order of Geo. M. Bain, Jr., cashier, twenty-five thousand and no $\frac{0}{100}$ dollars at the Exchange Nat'l bank, Norfolk, Va., value received.

R. W. HYMAN.
F. M. HYMAN.
GEO. L. ARPS.

That the other three notes are identical in all respects with the one hereinabove set forth. All of said notes were delivered to said bank and were held by it at the time of the appointment of your orator as receiver, and that the same are now in his possession and ready to be produced.

That while indebted to said bank said Hyman caused to be delivered to it on or about the dates thereof two certain writings, copies of which are as follows:

65 NEW YORK, *Octo.* 1, 1883.

Mess. Jno. B. Whitehead, pres'd't, & Geo. M. Bain, cashier, of the Exchange Nat'l bank, Norfolk, Va.

GENTLEMEN: As the executor of the estate of E. M. Robinson I hold with my co-ex'r, Abner H. Davis, title to 640 acres of land, being section 21, town of Cicero, Cook county, Illinois, under certain agreements made by and between Mr. Robinson, during his lifetime, and Mr. R. W. Hyman, and also between the executors and Mr. R. W. Hyman. Mr. Hyman is, upon a sale of said property, to receive one-half of the net profits, as provided in said agreements, arising from such sale. Mr. Hyman has requested me that whenever a sale is made of said property, after paying all taxes, liens, and assessments, to hold for account of your bank such sum, not exceeding one hundred thousand dollars, as the firm of Hyman & Dancy, Norfolk, Va., or Dancy, Hyman & Co., New York, may be owing to your bank at the time of re-lizing from such sale. This I hereby agree to do, Mr. Hyman joining me in the same with his approval.

Very respectfully yours,

(Signed) HENRY A. BARLING, *Executor.*

I approve the above.

(Signed) R. W. HYMAN.

66 NEW YORK, *July 5th*, 1884.

Messrs. Jno. B. Whitehead, pres'd't, and Geo. M. Bain, Jr., cashier, of the Exchange bank, Norfolk, Va.

GENTLEMEN: As the executor of the estate of E. M. Robinson I hold with my my co-executor, Abner N. Davis, a title of six hundred and forty acres of land, being section 21, town of Cicero, Cook county, Illinois, under certain agreements made by and between Mr. Robinson, during his lifetime, and Mr. R. W. Hyman, and also between the executor and Mr. R. W. Hyman. Mr. Hyman is, upon sale of said property, to receive one-half of the net profits, as provided in said agreements, arising from such sale.

Mr. Hyman has requested me that whenever a sale is made of said property, after paying all taxes, liens, and assessments, to hold for account of your bank such sum, not exceeding one hundred thousand dollars, as may be found to be due to him.

As Mr. R. W. Hyman, F. M. Hyman, and Geo. L. Arps, comprising the firms of Hyman & Dancy, Norfolk, Va., and Dancy, Hyman & Co., New York, *is* now about to be dissolved, but are still owing said bank by their four several and joint notes for twenty-five thousand dollars each, payable twelve months after the 5th of July, 1884, without interest, this understanding is to apply to the renewal of any part or the whole of said notes from time to time as may be agreed upon.

This I hereby agree to, Mr. Hyman joining me in the same with his approval.

Very respectfully yours, HENRY A. BARLING,
For Self, and
67 A. H. DAVIS, *Ex'ors.*

I hereby approve the same.
R. W. HYMAN.

And your orator alleges that said Barling and Davis in making the aforesaid agreement of September 27, 1867, and said Henry A. Barling, in executing said writings dated October 1, 1883, and July 5, 1884, had power and authority to thereby bind the estate of which said Barling, Mandell, and Edward H. Green are now trustees, and did thereby bind said trust estate.

Your orator alleges that by means of such writing all the right, title, and interest of said Hyman in and to said section 21 was in equity pledged as security for the payment of the indebtedness due by him to said bank and now so represented by the aforesaid notes.

That the following payments have been made upon one of said notes:

March 3, 1885	$5,000 00
July 2, 1885	5,619 08
January 2, 1886	4,000 00
September 10, 1886	2,000 00
January 4, 1887	2,000 00

besides which amounts no payments have been made upon any

Security for Costs.

STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court of Cook County.

WM. H. PETERS, Rec'r, etc., }
vs.
R. W. HYMAN, Adm'r, *et al.* }

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State.

GEO. W. SMITH.

Dated this 29 day of Aug., A. D. 1887.

Chancery Summons.

STATE OF ILLINOIS, } ss:
County of Cook, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Robert W. Hyman,
72 Jr., administrator of the estate of Robert W. Hyman, deceased; William R. Hyman, Francis M. Hyman, Mary Martha Pender, Helen P. Hyman, Robert W. Hyman, Jr., Walter R. Hyman, Henry H. Hyman, Duncan H. Hyman, Mary Hatton Hyman, Hezekiah Brown, George E. Brown, Mary E. Norman, Sarah F. Chisson, Estelle Hunter, Kenneth Patton Hyman, Robert Francis Hyman, Victor Lee Hyman, Preston Eugene Hyman, Annie Minerva Hyman, James Patton Hyman, Ella D. Sherrod, Lela L. Sherrod, Minnie Sherrod, Elizabeth B. Hyman, Henry A. Barling and Edward D. Mandell and Edward H. Green, trustees under the last will and testament of Edward Mott Robinson, deceased; Hattie H. R. Green, F. M. Hyman, George L. Arps, and Abner H. Davis, if they shall be found in your county, personally to be and appear before the circuit court of Cook county on the first day of the term thereof to be holden at the court-house in Chicago, in said Cook county, on the third Monday of September, A. D. 1887, to answer unto William H. Peters, receiver of the Exchange National Bank of Norfolk, Virginia, in his certain bill of complaint filed in said court, on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same

Witness Henry Best, clerk of said court, and the seal
[SEAL.] thereof, at Chicago, in said county, this 29th day of August, A. D. 1887.

HENRY BEST, *Clerk.*

(Endorsed:) P'd 2.00.

Served the within writ by delivering a copy thereof to the within-named defendant, Robert W. Hyman, on the 14th day of September, A. D. 1887; also served the within writ on the within-named
73 Robert W. Hyman, administrator, by reading and delivering a copy thereof to him the 14th day of September, A. D. 1887; the other within-named defendants not found in my county.

CANUTE R. MATSON, *Sheriff*,
By S. E. CLEVELAND, *Deputy*.

And afterwards, to wit, on the 20th day of September, A. D. 1887, there was filed in said court a certain affidavit of non-residence, which is in the words and figures following, to wit:

STATE OF ILLINOIS, }
County of Cook, } *ss*:

In the Circuit Court of said County. In Chancery.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Va.,
v.
ROBERT W. HYMAN *et al.*

Louis Danziger, being duly sworn, on oath deposes and says that the following-named defendants reside out of this State, so that process cannot be served upon them, and that their place of residence are as follows, namely: Hezekiah Brown, George E. Brown, Lafayette Hyman, Elizabeth Hyman, and John Hyman reside at Hamilton, Martin county, North Carolina. Mary Elizabeth Norman, Estelle Hunter, and Sarah Francis Chesson resside at Plymouth, Washington county, North Carolina. Mary Martha Pender, Duncan H. Hyman, and Henry H. Hyman reside at Tarborough, Edgecombe county, North Carolina. Theodore B. Hyman, William Hyman, and Claude B. Hyman reside at Goldsborough, North Carolina. Walter R. Hyman resides at Cherryville, Louisiana. Mary H. Hyman, Lela L. Bodie, and Minetta Sherrod reside at Palmyra, Halifax county, North Carolina. Kenneth L. Hyman, Robert Francis Hyman, Victor L. Hyman, Preston Eugene Hyman, Annie Minerva Hyman, James P. Hyman, and Willa D. Sherrod at Asheville, Buncombe county, North Carolina. Francis M. Hyman resides at Warrenton, North Carolina. George L. Arps resides at Norfolk, Virginia. Henry A. Barling, Edward H. Green, and Hetty H. R. Green reside in the city of New York, State of New York. Abner H. Davis and Edward D. Mandell reside at New Bedford, Massachusetts.

LOUIS DANZIGER.

Subscribed and sworn to before me this 19 day of September, A. D. 1887.

[NOTARIAL SEAL.] R. McCONNELL,
Notary Public.

And on the same day, to wit, the 20th day of September, A. D. 1887, the following, among other, proceedings were had and entered of record in said court and certain amendments to bill of complaint were filed; which said proceedings and amendments are in the words and figures following, to wit:

WILLIAM H. PETERS *et al.*
v.
ROBERT W. HYMAN, Administrator, &c., *et al.* } 62573. 2672. Bill.

On motion of solicitor for the complainant it is ordered
75 that leave be, and it hereby is, granted the complainants to amend their bill of complaint herein instanter.

In the Circuit Court of Cook County.

WILLIAM H. PETERS, Receiver, &c.,
v.
ROBERT W. HYMAN, JR., Administrator, &c., *et al.* } In Chancery.

And now comes said complainant and, by leave of court first obtained, amends the bill herein as follows: By striking out on page 9 the words "that said Robert W. Hyman left him surviving the following persons, his only heirs-at-law, namely," and inserting instead thereof the following: That the following-named persons are the heirs-at-law of said Robert W. Hyman, namely.

Also by striking out the following names wherever they occur in said bill:

William R. Hyman, Helen P. Hyman, Lela L. Sherrod, Minnie Sherrod, Elizabeth B. Hyman, and by inserting on page 10, at the end of the fourth line, and on page 13 after the name Abner H. Davis, the following names: Theodore B. Hyman, Lafayette Hyman, Elizabeth Hyman, John Hyman, William Hyman, Claude B. Hyman, Lela L. Bodie, Minetta Sherrod.

Also by changing the name Annie Minerva Hyman to Anna Minerva Hyman and by striking out the name "F. M. Hyman" where it occurs in the 12th line of the 13th page of said bill.

SMITH & PENCE,
Comp'ts' Solicitors.

76 And thereupon, on the 23rd day of September, A. D. 1887, there issued out of — under the seal of said court the people's writ of summons, directed to the sheriff of Cook county to execute; which said writ, with the sheriff's return thereon endorsed, is in the words and figures following, to wit:

Chancery Summons, Circuit Court.

STATE OF ILLINOIS, } ss:
County of Cook, }

The People of the State of Illinois to the sheriff of said county, Greeting:

We command you that you summon Francis M. Hyman, Mary Martha Pender, Walter R. Hyman, Henry H. Hyman, Duncombe H. Hyman, Mary Hatton Hyman, Hezekiah Brown, George E. Brown, Mary E. Norman, Sarah F. Chesson, Estelle Hunter, Kenneth Patton Hyman, Robert Francis Hyman, Victor Lee Hyman, Preston Eugene Hyman, Anna Minerva Hyman, James Patton Hyman, Ella D. Sherrod, Henry A. Barling and Edward D. Mandell and Edward H. Green, trustees under the last will and testament of Edward Mott Robinson, deceased; Hetty H. R. Green, George L. Arps, Abner H. Davis, Theodore B. Hyman, Lafayette Hyman, Elizabeth Hyman, John Hyman, William Hyman, Claude B. Hyman, Leis L. Bodle, and Minetta Sherrod, impleaded with Robert W. Hyman, Jr., administrator, &c., if they shall be found in your county, personally to be and appear before the circuit court of Cook county on the first day of the term thereof to be holden at the court-house, in Chicago, in said Cook county, on the third Monday of November, A. D. 1887, to answer unto William H. Peters, receiver of the Exchange National Bank of Norfolk, Virginia,
77 in his certain amended bill of complaint filed in said court, on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Henry Best, clerk of said court, and the seal
[SEAL.] thereof, at Chicago, in said county, this 23rd day of September, A. D. 1887.

HENRY BEST, *Clerk.*

(Endorsed:) P'd 10. The within-named defendants not found in my county this 21st day of November, 1887. Canute R. Matson, sheriff, by W. A. Johnson, deputy.

And afterwards, to wit, on the 27th day of September, A. D. 1887, there was filed in said court a certain certificate of mailing notice, which is in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court of Cook County.

WILLIAM H. PETERS, Receiver, }
vs. } Bill. No. 62375.
ROBERT W. HYM[illegible]S, JR., *et al.* }

I, Henry Best, clerk of the circuit court of Cook county in and for said county, in the State of Illinois, do hereby certify that on the

26th day of September, A. D. 1887, I sent by mail a notice, a copy of which is hereto attached, marked Exhibit "A," to the following defendants, and addressed as follows:

78 One copy to Hezekiah Brown, Hamilton, Martin county, North Carolina.

One copy to George E. Brown, Hamilton, Martin county, North Carolina.

One copy to Lafayette Hyman, Hamilton, Martin county, North Carolina.

One copy to Miss Elizabeth Hyman, Hamilton, Martin county, North Carolina.

One copy to John Hyman, Hamilton, Martin county, North Carolina.

One copy to Mrs. Mary Elizabeth Norman, Plymouth, Washington Co., North Carolina.

One copy to Miss Estelle Hunter, Plymouth, Washington Co., North Carolina.

One copy to Sarah Francis Chesson, Plymouth, Washington Co., North Carolina.

One copy to Mrs. Mary Martha Pender, Tarborough, Edgecombe Co., North Carolina.

One copy to Duncan H. Hyman, Tarborough, Edgecombe Co., North Carolina.

One copy to Henry H. Hyman, Tarborough, Edgecombe Co., North Carolina.

One copy to Theodore B. Hyman, Goldsborough, North Carolina.

One copy to William Hyman, " " "

" " " Claude B. Hyman, " " "

One copy to Walter R. Hyman, Cherryville, Louisiana.

One copy to Mrs. Mary H. Hyman, Palmyra, Halifax Co., North Carolina.

One copy to Mrs. Lela L. Bodie, Palmyra, Halifax Co., North Carolina.

One copy to Miss Minetta Sherrod, Palmyra, Halifax Co., North Carolina.

One copy to Kinneth P. Hyman, Asheville, Buncombe Co., North Carolina.

One copy to Robert Francis Hyman, Asheville, Buncombe Co., North Carolina.

One copy to Victor L. Hyman, Asheville, Buncombe Co., North Carolina.

One copy to Preston Eugene Hyman, Asheville, Buncombe Co., North Carolina.

One copy to Miss Anna Minerva Hyman, Asheville, Buncombe Co., North Carolina.

One copy to James P. Hyman, Asheville, Buncombe Co., North Carolina.

One copy to Miss Ella D. Sherrod, Asheville, Buncombe Co., North Carolina.

One copy to Francis M. Hyman, Warrenton, North Carolina.

One copy to George L. Arps, Norfolk, Virginia.
" " " Henry A. Barling, New York city, New York, 46 South St.
79 One copy to Edward H. Green, New York city, New York (46 South St.).
One copy to Mrs. Hetty H. R. Green, New York city, New York, 46 South St.
One copy to Abner H. Davis, New Bedford, Massachusetts.
" " " Edward D. Mandell, New Bedford, Massachusetts.
HENRY BEST, *Clerk.*

EXHIBIT "A."

Smith & Pence, attorneys.

Chancery Notice.

STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court of Cook County, September Term, A. D. 1887.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Virginia,
vs.
ROBERT W. HYMAN, JR., Administrator of the Estate of Robert W. Hyman, Deceased; Francis M. Hyman, Mary Martha Pender, Robert W. Hyman, Jr., Walter R. Hyman, Henry H. Hyman, Duncan H. Hyman, Mary Hatton Hyman, Hezekiah Brown, George E. Brown, Mary E. Norman, Sarah F. Chesson, Estelle Hunter, Kenneth Patton Hyman, Robert Francis Hyman, Victor Lee Hyman, Preston Eugene Hyman, Anna Minerva Hyman, James Patton Hyman, Ella D. Sherrod, Henry A. Barling and Edward D. Mandell and Edward H. Green, Trustees under the Last Will and Testament of Edward Mott Robinson, Deceased; Hetty H. R. Green, George L. Arps, Abner H. Davis, Theodore B. Hyman, Lafayette Hyman, Elizabeth Hyman, John Hyman, William Hyman, Claude B. Hyman, Lela L. Bodie, and Minetta Sherrod. } In Chancery. No. 62375.

Notice is hereby given to the said Francis M. Hyman, Mary Martha Pender, Walter R. Hyman, Henry H. Hyman, Duncan H.

penses in matters which in no way relate to or concern them or any of them.

And for that it appears by said bill that said complainant thereby seeks to foreclose, not only the lien on the interest in said lands by him alleged to have been assigned and pledged to said Exchange National Bank of Norfolk by said Robert W. Hyman, deceased, but also seeks prematurely and without consent of these defendants or any of them to enforce by foreclosure and sale the prior and paramount rights and interests of these defendants as against the said heirs and representatives of said Robert W. Hyman, deceased, in the same lands.

Wherefore, and for divers and other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they or either of them shall be compelled to make any further or other answer to the said bill, and they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

PADDOCK, ALDIS & WRIGHT,
Sol'rs for said Def'ts.

GEORGE L. PADDOCK, *Of Counsel.*

(Endorsed:) Filed Nov. 18, 1887.

84 And afterwards, to wit, on the 5th day of December, A. D. 1887, the following, among other, proceedings were had and entered of record in said court, to wit:

Order Dec'r 5, '87.

WILLIAM H. PETERS, Receiver, &c., *v.* ROBERT W. HYMAN, JR., Administrator, &c., *et al.*	62375, 2672. Bill and Am'd Bill.

This day came on to be heard the demurrers of the defendants Henry A. Barling, Abner H. Davis, Edward H. Green, Hetty H. R. Green, and Robert W. Hyman, Jr., to the amended bill in this cause, which was argued by counsel, and the court, being now fully advised in the premises, doth overrule said demurrers and doth grant the defendants thirty days from date in which to answer the said amended bill.

And afterwards, to wit, on the 4th day of January, A. D. 1888, there were filed in said cause certain answers, which are in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
County of Cook, }

In Circuit Court. In Chancery. December Term, A. D. 1887.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Virginia,
vs.
ROBERT W. HYMAN, JR., and Others.

The answer of Henry A. Barling and Edward D. Mandell, trustees under the last will and testament of Edward Mott Robinson, deceased, defendants in said cause.

85 These respondents, now and at all times saving all benefit of exception or otherwise to the manifold errors and insufficiencies in said bill manifest, for joint and several answer thereto, answering jointly and severally, say they have no personal knowledge as to the appointment on May 15, 1885, or any other time, of said complainant as receiver of said Exchange National Bank of Norfolk, Virginia, nor do they or either of them know whether or not the assets of said bank came into his possession, and that he now holds and is entitled to collect and enforce the same, and they therefore are unable to admit the same, and call for the proper proofs, record or otherwise, in that behalf.

And, further answering, they say that they believe that on or about June 20, 1864, a contract in writing was entered into between said Edward Mott Robinson and Robert W. Hyman (since deceased), and that the same is copied in substance in said bill, although for greater certainty they refer to the original thereof when produced in this cause.

And they further admit it to be true that said Edward Mott Robinson on or about June 14, 1865, died testate seized of the legal title in fee to the premises in said contract described, viz., an undivided half of section twenty-one (21), in township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian, subject to the equitable rights of said Hyman therein or in the proceeds thereof, and that it is also true that the will of said Edward Mott Robinson was duly probated on or about June 30, 1865, before the surrogate of the county of New York, and that by said will the said testator devised said land, among other estate, to Henry
86 A. Barling, Abner H. Davis, and Edward D. Mandell upon certain trusts, which will more fully appear upon reference to said will or a certified copy thereof, to which, for greater certainty, respondents crave leave to refer as the best evidence in that behalf.

And that it is true that on or about September 24th, 1867, another and further contract in writing was entered into between said Barling and Davis and Hyman, and that the same (omitting the writing referred to therein) is copied in substance in said bill, although for greater certainty they refer to the original when produced herein.

And they further say that it is true that large sums of money have been advanced by said Edward Mott Robinson under and in accordance with said agreements, and that the executors or their trustees under the said will of Edward Mott Robinson now hold the legal title in fee to said land, namely, section 21, under the will aforesaid and the deeds and contracts in writing referred to in said bill, as will more fully appear upon production thereof, and that it is also true that said defendants, Hetty H. R. Green, has beneficial interests under the said will of her father, the said Edward Mott Robinson, deceased, as will appear upon production of said will.

And respondents say that they believe it to be true that said Robert W. Hyman, the signer of said contracts, died on or about May 15, 1885, owning and holding all such rights and interests in said land and premises or the proceeds thereof as were held and owned by him therein at the time of entering into said agreements, subject to such contingent interest in a portion thereof as passed, if any, to said bank by the two several papers in said bill set forth, and that it is true that said Hyman's interests were subject
87 to the charge or lien to secure advances created by the express and special agreements entered into between said Hyman in his lifetime and the said Edward Mott Robinson and his executors and trustees.

And these respondents further say that they believe said Robert W. Hyman became indebted in some amount at some time or times to said Exchange National bank, and that notes were at some time held by said bank purporting to secure the same, but inasmuch as the matter of said indebtedness, if any there is, appears to be within the knowledge of said complainant these respondents leave him to make such proof as to its origin, nature, amount, duration, and parties as he may be advised, and they do not admit that said complainant is the holder of such notes as are described in said bill, or that there is the large amount due thereon claimed to be due in said bill, or that the supposed credits endorsed on said notes in said bill comprise all the credits to which said notes or the maker- thereof are entitled, and on information and belief they say that said complainant has or has had funds or assets of said makers or of said Robert W. Hyman which, or the value whereof to a large amount, are fair credits on said notes in addition to the sums admitted as credits in said bill; and these respondents say that it is true that on or about October 1st, 1883, this respondent, Henry A. Barling, signed and transmitted to the parties addressed or one of them a letter bearing that date, whereof the paper of that date set out in said bill is, as respondents believe, a substantial copy, on which said letter said Robert W. Hyman endorsed his approval in substance as stated in said bill, and that it is also true that afterwards, on or about July 5, 1884, this respondent, Henry A. Barling, for himself and for his co-executor, Abner H. Davis, signed and transmitted to the par-
88 ties addressed or one of them a letter bearing that date, whereof the paper of that date set out in said bill is, as respondents believe, a substantial copy, with the approval of said Robert W. Hyman endorsed thereon, in substance as stated in said bill,

but they for greater certainty crave leave to refer to the original, and respondents submit that the construction of complain-t as to the legal effect of said letters, to wit, that they passed all said Hyman's interests, is an incorrect one, and they deny that either by said letters as alleged in said bill or otherwise said Robert W. Hyman ever, in equity or otherwise, pledged to said bank "all his right, title, and interest in and to said section twenty-one (21)" or more than a part thereof.

And respondents say that they believe that letters of administration were issued to said defendant, Robert W. Hyman, Jr., by the probate court of Cook county upon the estate of said Robert W. Hyman, deceased, which are in full force; that said Hyman is acting as such administrator, and that said estate is unsettled, and they believe that said Robert W. Hyman, deceased, died intestate and left him surviving many heirs-at-law, his collateral relatives, but respondents cannot say if all such heirs are correctly named in said bill.

And respondents say that it is true the present trustees under the will of Edward Mott Robinson claim to be now due a large amount of money upon the account provided in said agreements, to wit, an amount in excess five hundred and five thousand four hundred and fourteen dollars and twenty-four cents ($505,414.24).

And they further say that from the time of said purchases on joint account as aforesaid up to the time of the accruing of the
89 interest of said bank as aforesaid and from that time up to the death of said Robert W. Hyman no outlay on such joint account was ever made without the full consent and approval of said Robert W. Hyman, the money therefor usually passing through his hands or under his supervision; that it is wholly untrue that any of such outlays were improper; and they further say that no charges of compound interest have ever been made in said account save by contract and in anticipation of realizing such amount from the sale of said premises under said contracts as would make such compounding of interest proper under the terms thereof; that it is not true that any claims have been made on behalf of these respondents or any of them which were greatly (or at all) in excess of the amount due under said contract, and they also say that during all the times aforesaid prior to the decease of said Robert W. Hyman the aforesaid account of said trustees with said land (being the joint account provided for in said agreements) was from time to time regularly and fairly stated between said Robinson and said Hyman and said executors or trustees and said Hyman, as the case might be, and the balance from time to time well and truly ascertained and agreed between them upon the assumption that compound interest was or would be chargeable whenever the said trustees should in their discretion decide to make sale of the land, and that since the death of said Robert W. Hyman the same system of outlay and accounting and statement of accounts has been continued to the present time between said trustees and the personal representatives of said Robert W. Hyman, deceased; and respondents say that they are advised

by counsel and submit to the court that as to all such ac-
90 countings and statements of accounts prior to the time when said Exchange National bank became interested as aforesaid the same are in all respects binding upon the said bank as well as upon said Hyman, and that the said bank is not entitled in law in any respect to question the items of such accounts or the balances thereby stated as found to be due; and they further show that such accounts were, at any rate, just and correct and embraced the proper matters or charge under the agreements aforesaid and no others, as also do all subsequent accounts down to the present time.

And, further answering, the respondents say that no portion of said premises has ever been sold under the joint-account agreements aforesaid, and that after one year had elapsed from the date of said contract of September 24th, 1867, it became apparent, to wit, long before the accruing of any interest in said contract by said bank as aforesaid, that it was not practicable under the circumstances to make sale of the premises aforesaid, either in gross or in detail, and that in all probability a long term of years would elapse before the land could advantageously be sold with reference to the realization of a profit at all commensurate with the interests and expectations of the parties; and respondents say that, in view of this situation and in view of the fact that all the advances had in the past been made by said Robinson's estate and would in the future be derived from the same source, it was understood and agreed between the parties to said contracts that the discretion of the said executors and trustees as to the time of exercising their right and power of sale over said premises should not be limited in point of time, but should be a general one, to subsist so long as, in
91 the judgment of the executors, there seemed a reasonable prospect of profit and advantage in postponing the winding up of the said adventure by a sale of the said premises, until the expiration of which time said joint account should not be closed or said premises sold; and these respondents submit that, aside from any understanding or agreement between the parties extrinsic and subsequent to the said written agreements concerning the winding up of said adventure, *that* such was and is the fair intention and meaning of the written agreements themselves, often agreed upon and continuously for over twenty years act*ing* upon by the parties concerned.

And respondents, further answering, say that all said agreements and dealings between the said executor- or trustees and the said Robert W. Hyman touching the right of the former to continue said venture (or a sufficient portion thereof to charge said complainant with full notice thereof) occurred long prior to the accruing of any interest in favor of said bank, and that said bank took its aforesaid interest subject to the same and with full notice thereof; that, in pursuance of such construction of said written agreements and of the understanding between the said Hyman and themselves, the said executors continued the business of holding the said premises, at a very heavy annual expense to themselves, without contribution from the said Hyman, instead of winding up the said venture at that or

any earlier day, and that such state of affairs continued without demand on the part of said Hyman upon the said executors to make sale of said premises from the time of said agreement of September 24th, 1867, to the day of the death of said Hyman, a period of over seventeen years, so that respondents aver that long prior to the accrual of any interest of said bank it had come to be under-
92 stood and agreed between the said Hyman and the said holders of said legal title that the same was to be held, at the discretion of said holders, for a long course of years without sale in order that the property might take the benefit of the natural growth of the city of Chicago, which was near, and by which it was expected the said lands would be so largely enhanced in value as not only to pay off the advances aforesaid, but yield a considerable profit to the said Hyman and respondents. The respondents admit that considerable sums of money have been received by the said trustees *and* said Edward Mott Robinson on account of the rent of said premises, all of which have been properly accounted for, as respondents believe, either by the said Robert W. Hyman while in charge of the said premises or by his representatives or the agents of these respondents since that time.

Respondents believe (from information) that the complainant's claim has been presented before the probate court of Cook county in the estate of said Robert W. Hyman and is now pending therein, but also believe (from information) that the same has never yet been allowed, but that the same will be allowed for such sum as complainant shows himself entitled to claim out of said estate.

Respondents, further answering, admit that section 21 is a valuable tract of land, but cannot say whether or not the same can now be sold for more than sufficient to satisfy all advances made upon said premises, and also to pay complainant's indebtedness out of the share belonging to the estate of said Robert W. Hyman, nor are they able to state the present value of the said premises, but they believe that the same, by reason of its proximity to the city
93 of Chicago, by reason of probable future development of railway and other connections and for other reasons, is likely to enjoy, within the next five or ten years, a large enhancement of value, the benefit whereof to these respondents and the representatives of said Robert W. Hyman would be lost by the immediate sale thereof, in accordance with the prayer of the bill in this case, for the purpose of satisfying a part of or all the claims for the said complaint.

Respondents, further answering, say that the said trustees, holders of the legal title of said lands, have heretofore, under the advise of counsel, considered and still consider themselves vested with the fair and reasonable discretion in the matter of deciding upon the time when to wind up the venture aforesaid; that (notwithstanding the decease of said Robert W. Hyman) they, the said holders of the legal title, have (for their beneficiary) an interest in the execution of such power, and that therefore they have been acting under the belief that so long as there appeared a fair prospect of considerable

profits by holding the title it was their right and duty so to do within fair and reasonable limits not yet reached.

And respondents, further answering, say that the said trustees, deeming themselves entrusted with such power of sale not alone for the bank as pledged of a portion of the said Robert W. Hyman's interests, but also for the protection of the interests of the beneficiaries under the will of said Edward Mott Robinson, and also for those entitled to the residuary interests derivable in right of the said Robert W. Hyman after the satisfaction of whatever claim might be due the said bank, have considered, under advice as afore-
94 said, and still consider it to be their right and duty to retain in their hands the aforesaid lands unsold for the present and for a considerable term hereafter, and in this connection respondents deny that the said trustees have by their contract given occasion to any charge or claim that they were disposed to disregard their obligation under the said will and the contracts aforesaid; that if they have not made sale of said lands such non-action has been in view of the circumstances above narrated and not for the purpose of hindering the said bank or denying to it any right it may have in the premises.

Respondents, further answering, say that if they or said trustees have refused to make a sale or attempt at sale of the lands aforesaid at this or any previous time at the instance of the complainants or any one else it was not for any other purpose than the purpose of carrying the joint venture aforesaid to a successful and profitable conclusion in accordance with the understanding aforesaid; and respondents, further answering, say that they have never declined nor has any of said trustees ever declined to complainant or any one else to take such action touching the execution of any power vested in them or any of them relating to the sale or disposition of said land and the application of the proceeds of such sale as a court upon a fair hearing may adjudge and determine to be lawful and proper.

Respondents, further answering, say that, taking the interests of all the parties concerned as the object in view and not having the selfish purpose of benefiting said bank alone, it is to the interests of the fund mentioned in said bill that there should not at present be any attempt to hold a forced sale of the said land, but that the said trustees should be permitted, without interference by this court or otherwise, to carry out the same policy which was agreed
95 upon by the parties interested at the time and in the manner aforesaid.

And respondents respectfully submit that it does not appear upon the face of said bill that any equity is therein stated as against these respondents, or that these respondents are, or that either of them is, a necessary and proper party to the said bill or to any bill for the foreclosure of the junior and subordinate liens asserted in said bill on behalf of the said complainants.

And, having answered the aforesaid bill of complaint, they pray

to be hence dismissed with their reasonable costs in that behalf expended, etc.

By GEORGE L. PADDOCK, *Of Counsel.*

PADDOCK, ALDIS & WRIGHT,
Sol'rs, 65 Portland Block, Chicago.

(Endorsed:) Filed Jan. 4, 1888.

STATE OF ILLINOIS, } ss:
County of Cook, }

In Circuit Court. In Chancery. December Term, A. D. 1887.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Virginia,
vs.
ROBERT W. HYMAN, JR., and Others.

The answer of Edward H. Green, trustee under the will of Edward Mott Robinson, deceased, and Hetty H. R. Green, two of the defendants in said cause.

These respondents, now and at all times saving all benefit of exception or otherwise to the manifold errors and insufficiences in said bill manifest, for joint and several answer thereto jointly
96 and severall say that as to the appointment of said complainant as receiver as alleged in said bill, as to his holding the assets of said bank as therein alleged, they have and each of them has only hearsay information and leave said complainant to make proof thereof, not admitting the same to be true.

And they, further answering, say that they have heard that on or about June 20th, 1864, there was executed between Edward Mott Robinson, since deceased, and Robert W. Hyman, since deceased, some contract or paper of that date relating to an interest in the land in said bill mentioned, and that they have also heard that afterwards, on or about September 24th, 1867, there was executed between the executors of said Edward Mott Robinson and said Robert W. Hyman some other contract or paper relating to the same or some other interest in said land, but as both said matters appear by said bill to be in writing respondents require the said complainant to make proper proof of the same and each of the same; and the said Edward H. Green separately says that he is acting as one of the trustees under the will of said Edward Mott Robinson, deceased (his cotrustees being said defendants Henry A. Barling and Edward D. Mandell), but that as he has but lately been so acting he has not sufficient personal knowledge of the dealings with said Robert W. Hyman or his representatives in said bill mentioned to enable him to answer specifically and of his own knowledge in that behalf, and so he leaves said complainant to prove the allegations of said bill in that behalf; and as to the allegations of said bill touching the supposed business relations between

said Robert W. Hyman and said bank and the supposed
97 assignment of an interest in said land or its proceeds by said Hyman to said bank, as in said bill alleged, and as to the state of the account or indebtedness, if any there was, between said bank and said Hyman or his personal representatives, or as to the letters to said bank in said bill referred to, these respondents have no other than hearsay information and so decline to admit the same, but as the same are claimed to be within complainant's knowledge they leave said complainant to make such proof thereof as he may be advised to make.

And these respondents admit that said Hetty H. R. Green has an interest in said land which is prior and paramount to any lien or interest of said Robert W. Hyman or his heirs or assigns or representatives in said land or its proceeds and to any liens, claim, or interest of said complainant (if any he has) in the interest or any part of the interest of said Hyman or his heirs, assigns, or representatives therein, which interest of said Hetty H. R. Green will more fully and at large appear by the deeds and evidences of title relating thereto when produced, to which for greater certainty reference is hereby had.

And respondents have no other than hearsay information as to the supposed letters of administration upon the estate of said Robert W. Hyman, deceased, or the proceedings in said probate court (if any) in the matter of said complainant's claim, and as such appear to be matters of record they leave said complainant to make such proof as he may be advised to make in that behalf.

And upon information and belief respondents say it is not true
98 that said Robert W. Hyman at any time assigned to said bank all his interest in said land or its proceeds, as alleged in said bill, or at any time assigned to said bank any absolute or existing interest whatever or anything beyond a mere contingent interest in the proceeds of a sale or sales of said land when the same should be sold according to the agreement and understanding between said Robert W. Hyman and the legal owners of said land, as hereinafter mentioned.

And, further, respondents say that if any charges of compound interest have been made in the account referred to in said bill the same are proper and in accordance with the contracts and agreements of the parties concerned.

And respondents say that they are informed that there is a very large amount due the devisees and representatives of said Edward Mott Robinson upon the joint account between the said Hyman and said Robinson and the respective representatives, but what the exact amount may be respondents do not personally know and leave to be shown by competent evidence.

And respondents say that, as they are informed and believe and so state, the parties to said joint account long before the date of said alleged assignment by said Hyman to said bank had to come to an understanding and agreement between themselves in consideration of the advances theretofore made and thereafter to be made in and about such venture by the said Robinson and his representatives

that such joint account should not be wound up by *by* a sale until such time as the trustees of said Robinson in their discretion should see fit to make such sale; that it was well understood and agreed between the parties at that time that the object of such joint account
or venture was certain to require a considerable term of years
99 for its accomplishment. and respondents say that the power so to sell was designed for the protection primarily of the interest of said Robinson's estate in said land and to save not only reimbursement for the advances aforesaid (all of which were made by said Robinson and his estate), but a profit commensurate with the time and capital employed in the business, and that the time has not yet come for an advantageous and profitable sale of said lands; that a sale such as is prayed in said bill, for the mere purpose *for* returning to the estate of said Robinson the advances and interest and paying the alleged claim of said complainant, would not in all the purposes of such joint account, but would in great part fulfil the same, and they submit that such interests, if any, as complainant may have derived in the proceeds of a sale are in all respects subject to the aforesaid agreements as to the time and mode of sale.

And they further show that under said agreement as to the time and manner of winding up said joint account and in full reliance upon the same as giving them a discretion as aforesaid *and* representatives of said Edward Mott Robinson continued to make advances for taxes and other expenses of said land largely in excess of the income thereof until the death of said Robert W. Hyman and are still continuing the same in good faith for the object of said venture and expecting to accomplish a satisfactory sale thereof within some further reasonable term of years not yet elapsed.

And respondents say that it is true that said section twenty-one is a valuable tract of land, but they cannot say of their own knowledge whether it can now be sold for the amount stated in said bill, but they are informed and believe that by reason of its situation and proximity to the city of Chicago and for other reasons it is
likely to enjoy during the next ten years a large enhance-
100 ment of value, the benefit whereof to the parties interested in said joint account would be lost by an immediate sale, as prayed in said bill, to satisfy the claim of said bank.

Respondents, further answering, say that the said trustees, holders of the legal title of said lands, have heretofore, under the advice of counsel, considered and still consider themselves vested with the fair and reasonable discretion in the matter of deciding upon the time to wind up the venture aforesaid (notwithstanding the decease of said Robert W. Hyman) —; they, the said holders of the legal title, have (for their beneficiary) an interest in the execution of such power, and that therefore they have been acting under the belief that so long as there appeared a fair prospect of considerable profits by holding the title it was their right and duty so to do, within fair and reasonable limits not yet reached.

And respondents, further answering, say that the said trustees, deeming themselves entrusted with such power of sale, not alone for the said bank, as pledgee of a portion of the said Robert W. Hyman's

interests, but for the protection of the interests of their beneficiary, and also for those entitled to the residuary interests derivable in right of the said Robert W. Hyman, after the satisfaction of whatever claim might be due the said bank, have considered under advice as aforesaid and still consider it to be their right and duty to retain in their hands the aforesaid lands unsold for the present and for a considerable term hereafter, and in this connection respondents deny that the said trustees have by their conduct given occasion to any charge or claim that they were disposed to dis-
101 regard their obligations under the said will and the contracts aforesaid; that if they have not made sale of said lands such non-action has been in view of the circumstances above narrated and not for the purpose of hindering the said bank or denying to it any right it may have in the premises.

Respondents, further answering, say that if the said trustees have refused to make a sale or attempt at sale of the lands aforesaid ve this or any previous time, at the instance of the complainant d, at one else, it was not for any other purpose than the purpose or any ing the joint venture aforesaid to a successful and profit of carry- clusion, in accordance with the understanding aforesa able con- pondents, further answering, say they have never decl id; and re- any of said trustees ever declined to complainant or hined nor has take such action touching the execution of any any one else to them or any of them relating to the sale or disposit power vested in the application of the proceeds of such sale as on of said land — fair hearing, may adjudge and determine to be l the court, upon a

And respondents, further answering, say that, awful and proper. of all the parties concerned as the object in view aking the interests view the selfish purpose of benefitting said ban and not having in interests of the fund mentioned in said bill that k alone, it is to the present be any attempt to hold a forced sale there should not at that the said trustees should be permitted, witho the said land, but this court or otherwise, to carry out the same nt interference by agreed upon by the parties interested at the time policy which was aforesaid; and respondents respectfully submit th nd in the manner

pear upon the face of said bill that any at it does not ap-
102 stated as against these respondents, or that t equity is therein are or that either of them is a necessary and hese respondents the said bill or to any bill for the foreclosure of the proper party to ordinate liens asserted in said bill on behalf of the junior and sub- ants. said complain-

And, having fully answered the aforesaid bill of com plaint, they now pray to be hence dismissed with their reasonable osts in that behalf expended, etc.

By GEO. L. PADDOCK, *Counsel*, &
PADDOCK, ALDIS & WRIGHT,
Solicitors, 65 *Portland Blk, Chicago, Ill.*

STATE OF ILLINOIS, }
County of Cook, } *ss:*

In the Circuit Court. In Chancery. December Term, A. D. 1887.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Virginia,
vs.
ROBERT W. HYMAN, JR., *et al.*

The answer of Robert W. Hyman, Jr., in person and as administrator of the estate of Robert W. Hyman, deceased; William R. Hyman, Francis M. Hyman, Mary Martha Tender, Helen P. Hyman, Walter R. Hyman, Henry H. Hyman, Duncan H. Hyman, Mary Hatton Hyman, Hezekiah Brown, George E. Brown, Mary E. Norman, Sarah F. Chesson, Estelle Hunter, Kenneth Patton Hyman, Robert Francis Hyman, Victor Lee Hyman, Anna Minerva Hyman, James Patton Hyman, Preston
103 Eugene Hyman, Ella D. Sherrod, Lela L. Sherrod, Minnie Sherrod, Elizabeth B. Hyman, defendants, impleaded with Henry A. Barling and others, to the bill of complaint in said cause.

These respondents, now and at all times saving all benefit or exception or otherwise to the manifold errors and insufficiencies in said bill, jointly and severally thereto answering, say that they have no personal knowledge as to the appointment on May 15th, 1885, or any other time of the complainant as receiver of said national bank, nor do they or any of them know whether or not the assets of said bank came into possession of said complainant, or whether or not he now holds and is entitled to collect and enforce the same; wherefore they are unable to admit the said matters or any of them, and pray that the proper proofs, record or otherwise, be made in that behalf.

Further answering, said respondents jointly and severally say that they believe that on or about June 20th, 1864, a contract in writing was entered into between the said Edward Mott Robinson and Robert W. Hyman, deceased, and that the same, as respondents believe, is copied with substantial accuracy in said bill, but for greater certainty crave leave to refer to the original when produced in this cause.

Further answering, they say that they believe it to be true that Edward Mott Robinson departed this life on or about June 14th, 1865, and that they have understood he left a certain last will and testament, and died *siezed* of the legal title in fee of the undivided one-half of section 21, township 39 north, range 13 east of the 3rd principal meridian, mentioned in said bill, subject to such equitable rights as the said Robert W. Hyman had therein or in the
104 proceeds thereof, and they also believe that it is true that the will of said Robinson was afterwards probated before the surrogate of the county of New York, but inasmuch as such matters

and the contents and nature of said will are matters of record they crave leave to refer to the same for greater certainty. Respondents believe that on or about the 24th of September, 1867, a certain other contract in writing was entered into between said Robert W. Hyman, deceased, and said Henry A. Barling and Abner H. Davis, executors of said Robinson, a substantial copy whereof is contained in said bill, but for greater certainty respondents crave leave to refer to the same when produced herein.

Respondents, further answering, jointly and severally say that it is true that considerable sums of money have been advanced under the said agreements by the said Edward Mott Robinson in his life time and by his executors and trustees since his death, and that, as respondents are informed, the legal title in fee of the said section 21 is now held under the will of said Robinson by his executors or trustees, but inasmuch as the said matters appear by the said bill to be dependent upon deeds and other writings and records, these respondents crave leave to refer to the same for greater certainty when the same shall be produced. Respondents further say that they believe it to be true that the said Hetty H. R. Green has some beneficial interest under the will of said Robinson in said premises, the nature whereof will more fully appear upon production of the evidence as aforesaid.

And respondents, further answering, jointly and severally say that they believe it to be true that the said Robert W. Hyman, 105 the signer of the contracts aforesaid, departed this life at Chicago on or about May 15th, 1885, owning and holding all such rights and interests in said lands and premises or the proceeds thereof as were by him at the time of entering into the aforesaid agreements subject to such contingent interest in a portion of said proceeds, if any, as passed to said bnank by the two several papers in said bill set forth, and subject to such modifications as were consequent upon the subsequent accounts between the said Hyman and the estate of said Robinson by the terms of said contracts. Respondents believe it to be true that the said Hyman's interests at the time of his death were subject to the charge or lien to secure advances in accordance with the express and special agreements entered into between him in his lifetime and the said Robinson and his executors and trustees.

Respondents, further answering, jointly and severally say that they have heard that the said Robert W. Hyman became indebted in some amount at some time or times to the said Exchange National bank, and that notes were at some time held by said bank purporting to secure the same or to have some relation to the same, but inasmuch as such matters, if any such indebtedness there was, appears to be within the knowledge of the said complainant, respondents leave him to make such proof as to the origin, nature, amount, duration, and parties as he may be advised to make, and for lack of personal knowledge upon that subject respondents do not nor does any of them admit that said complainant is the holder of such notes as are described in said bill, or that there is a large amount due thereon claimed to be due in said bill, or that the sup-

posed credits endorsed on said notes in said bill comprise all
106 the credits to which the said notes or the makers thereof or the said Robert W. Hyman, deceased, or his administrator may be entitled in law and equity, and on information and belief they say that the said complainant now has or has heretofore had within his control, which he had applied or might have applied, funds or assets of said makers and the said Robert W. Hyman, deceased, which funds or assets or the values thereof to a large amount are fair credits on said notes in addition to the sums admitted by complainant in said bill as credits thereon, and as to the alleged letters in sais bill mentioned, bearing date October 1st, 1883, and June 5th, 1884, purporting to be addressed to the said bank or its officers and relating to the indebtedness between the said Hyman or his firm and the said bank in manner and form as stated in said bill, respondents, further answering, jointly and severally say that from a lack of personal knowledge in that behalf they do not admit the writing and delivery of said letters, but leave the said complainant to make such proof in that behalf as he may be advised to be material and proper; but respondents upon advice of counsel deny that the construction by complainant in said bill of the legal effect of said letters, to wit, that they passed all of said Hyman's interest in the said land or its proceeds by way of a pledge in favor of the said bank, is a correct and proper one, and they further upon information and belief deny and each of them denies that either by said letters, as alleged in said bill, or by any other means said Robert W. Hyman in his lifetime ever, in equity or otherwise, pledged to said bank "all his right, title, and interest in and to said section 21" or ever at any time pledged more than some small and
107 contingent portion thereof, subject to existing and prior agreements and contracts between the said Robert W. Hyman and the owners of said premises during the joint account upon which said land was purchased and the time and mode of winding up the said account by a sale and disposition of said premises by the legal holders of said land or the trustees under the will of said Edward Mott Robinson.

And respondents, the said Robert W. Hyman, Jr., of his own knowledge and the other respondents upon information and belief jointly and severally say that letters of administration were issued to the said defendant, Robert W. Hyman, Jr., by the probate court of Cook county upon the estate of said Robert W. Hyman, deceased, which are in full force; that the said administrator is now acting in that behalf, and that the said estate is yet unsettled and they believe that said Robert W. Hyman, deceased, died intestate and left him surviving as heirs-at-law these respondents and, so far as these respondents know or believe, no other heirs-at-law whomsoever.

Respondents, further answering, jointly and severally say that it is true that the present trustees under the will of said Edward Mott Robinson claim that there is now due a large amount of money upon the account provided in said agreement of June 20th, 1864,

and September 24th, 1867, the amount of which claim, as respondents are informed, exceeds the sum of $500,000.

Further answering, respondents jointly and severally say that from the time of the aforesaid purchase on joint account up to the time of the accruing of the contingent and partial interest of said bank as aforesaid and from that time up to the time of the death of said Robert W. Hyman there were continual advances on the
108 part of the owners of said lands not only for purchase-money and interest thereon, but for taxes, assessments, improvements, and other expenses of managing the said premises, as well as credits upon said joint account by reason of such income as was derived from the said premises from time to time, and that upon a statement of the said joint account, whenever it should become proper to make the same, the amount of balance due from the estate of the said Robert W. Hyman, deceased, to the estate of the said Edward Mott Robinson will appear.

Further answering, respondents jointly and severally say that no portion of said premises has ever been sold under the aforesaid joint account agreements, and that respondents have been informed that long before the said bank obtained its aforesaid interests in the said land or its proceeds it was ascertained by consultation and agreement between the parties interested, viz., the said Robert W. Hyman, deceased, and the trustees under said will, owners of the legal title, that it was to the interest of both parties that the advances of said trustees should continue to be made for a considerable term of years in order that, through the growth of the city of Chicago, there might be realized a profit commensurate with the interests of the parties and the capital expended.

And respondents, further answering, jointly and severally say that they do not admit the claim of the said complainant as a right to subject the said premises to an immediate and forced sale, or the right of the said complainant to an immediate and compulsory winding up of the aforesaid joint account and dealing with reference to the said land, and submit that any sale or any winding up decree to be entered in this case or any other should take
109 into account the rights and interests of all the parties concerned in such venture, as well as the interests of the said complainant as receiver of said bank, and that for the above reasons these respondents deny the right of the said complainant to treat the dealings between the said bank and the said Robert W. Hyman, deceased, as an assignment of all the interests of the said Robert W. Hyman and as entitling him to the relief prayed herein, and on the contrary they submit that no sale or winding up of said joint account can properly and equitably be had at the instance of the said complainant against the consent and contrary to the interests of these respondents and without consent of said trustees according to said contracts; and respondents, further answering, jointly and severally say that the said section 21 is a valuable tract of land, but they are not able to state a price at which the same could now be

sold, but they believe that by reason of its proximity to the city of Chicago and the probable future developments of railway and other industries the said tract is likely to enjoy, within the next five or ten years, a material enhancement of value, and that such enhancement would be lost to these respondents in case of a sale in accordance with the prayer of the bill in this cause for the purpose of satisfying the mere past advances and interest and the claim of the said complainant.

And the respondents, further answering, jointly and severally say that they are informed (and believe) by the said trustees holding the legal title to the said lands that the said trustees heretofore under the advice of counsel have considered and still consider themselves vested with a fair and reasonable discretion in the matter of
110 determining the time for winding up the aforesaid joint venture, and that notwithstanding the decease of the said Robert W. Hyman the said trustees have a present and continuing interest in the execution of such power in accordance with the understandings and agreements arrived at in the lifetime of the said Robert W. Hyman, deceased, and prior to the accruing of the interest of the said bank, under which consideration the said trustees have been acting, and under the further consideration and belief, as respondents are informed and believe, that there appears to the said trustees a fair and reasonable prospect of considerable profits hereafter to accrue through the holder of the said title by keeping open said joint account and business, and that they further believe and considered, as respondents are informed and believe, that it was their right and duty as such trustees to continue to hold the said lands unsold and said joint account unclosed within reasonable limitation of time not yet reached.

Respondents, further answering, jointly and severally say that they are informed by the said trustees and verily believe that the said trustees deem themselves entrusted with the aforesaid powers of sale not merely for the said bank in its capacity of pledgee of some interest of said Robert W. Hyman, but also for the protection of the interests of the beneficiaries under the will of said Robinson, and the protection of the residuary interests of these respondents not assigned by the said Robert W. Hyman by way of pledge to the said bank, and that the said trustees, acting upon advice of counsel, deem it to be their duty to continue such trust for a considerable term thereafter, and that these respondents thus far have seen no
111 reason to doubt the propriety of holding the said lands for the present in preference to an immediate and forced sale thereof, as prayed in said bill, and as to any other matters in said bill contained not hereinabove expressly answered unto, confessed or denied, these respondents say that they do not admit the same to be true in manner and form as alleged in said bill, but leave the said complainant to make such proof thereof as he may be advised to make.

And having fully answered the aforesaid bill of complaint, they

and September 24th, 1867, the amount of which claim, as respondents are informed, exceeds the sum of $500,000.

Further answering, respondents jointly and severally say that from the time of the aforesaid purchase on joint account up to the time of the accruing of the contingent and partial interest of said bank as aforesaid and from that time up to the time of the death of said Robert W. Hyman there were continual advances on the
108 part of the owners of said lands not only for purchase-money and interest thereon, but for taxes, assessments, improvements, and other expenses of managing the said premises, as well as credits upon said joint account by reason of such income as was derived from the said premises from time to time, and that upon a statement of the said joint account, whenever it should become proper to make the same, the amount of balance due from the estate of the said Robert W. Hyman, deceased, to the estate of the said Edward Mott Robinson will appear.

Further answering, respondents jointly and severally say that no portion of said premises has ever been sold under the aforesaid joint account agreements, and that respondents have been informed that long before the said bank obtained its aforesaid interests in the said land or its proceeds it was ascertained by consultation and agreement between the parties interested, viz., the said Robert W. Hyman, deceased, and the trustees under said will, owners of the legal title, that it was to the interest of both parties that the advances of said trustees should continue to be made for a considerable term of years in order that, through the growth of the city of Chicago, there might be realized a profit commensurate with the interests of the parties and the capital expended.

And respondents, further answering, jointly and severally say that they do not admit the claim of the said complainant as a right to subject the said premises to an immediate and forced sale, or the right of the said complainant to an immediate and compulsory winding up of the aforesaid joint account and dealing with reference to the said land, and submit that any sale or any winding up decree to be entered in this case or any other should take
109 into account the rights and interests of all the parties concerned in such venture, as well as the interests of the said complainant as receiver of said bank, and that for the above reasons these respondents deny the right of the said complainant to treat the dealings between the said bank and the said Robert W. Hyman, deceased, as an assignment of all the interests of the said Robert W. Hyman and as entitling him to the relief prayed herein, and on the contrary they submit that no sale or winding up of said joint account can properly and equitably be had at the instance of the said complainant against the consent and contrary to the interests of these respondents and without consent of said trustees according to said contracts; and respondents, further answering, jointly and severally say that the said section 21 is a valuable tract of land, but they are not able to state a price at which the same could now be

sold, but they believe that by reason of its proximity to the city of Chicago and the probable future developments of railway and other industries the said tract is likely to enjoy, within the next five or ten years, a material enhancement of value, and that such enhancement would be lost to these respondents in case of a sale in accordance with the prayer of the bill in this cause for the purpose of satisfying the mere past advances and interest and the claim of the said complainant.

And the respondents, further answering, jointly and severally say that they are informed (and believe) by the said trustees holding the legal title to the said lands that the said trustees heretofore under the advice of counsel have considered and still consider themselves vested with a fair and reasonable discretion in the matter of
110 determining the time for winding up the aforesaid joint venture, and that notwithstanding the decease of the said Robert W. Hyman the said trustees have a present and continuing interest in the execution of such power in accordance with the understandings and agreements arrived at in the lifetime of the said Robert W. Hyman, deceased, and prior to the accruing of the interest of the said bank, under which consideration the said trustees have been acting, and under the further consideration and belief, as respondents are informed and believe, that there appears to the said trustees a fair and reasonable prospect of considerable profits hereafter to accrue through the holder of the said title by keeping open said joint account and business, and that they further believe and considered, as respondents are informed and believe, that it was their right and duty as such trustees to continue to hold the said lands unsold and said joint account unclosed within reasonable limitation of time not yet reached.

Respondents, further answering, jointly and severally say that they are informed by the said trustees and verily believe that the said trustees deem themselves entrusted with the aforesaid powers of sale not merely for the said bank in its capacity of pledgee of some interest of said Robert W. Hyman, but also for the protection of the interests of the beneficiaries under the will of said Robinson, and the protection of the residuary interests of these respondents not assigned by the said Robert W. Hyman by way of pledge to the said bank, and that the said trustees, acting upon advice of counsel, deem it to be their duty to continue such trust for a considerable term thereafter, and that these respondents thus far have seen no
111 reason to doubt the propriety of holding the said lands for the present in preference to an immediate and forced sale thereof, as prayed in said bill, and as to any other matters in said bill contained not hereinabove expressly answered unto, confessed or denied, these respondents say that they do not admit the same to be true in manner and form as alleged in said bill, but leave the said complainant to make such proof thereof as he may be advised to make.

And having fully answered the aforesaid bill of complaint, they

now jointly and severally pray to be hence dismissed with their reasonable costs in that behalf expended, &c.

By GEO. L. PADDOCK, *Their Counsel, and*
PADDOCK, ALDIE & WRIGHT,
Their Solicitors, 65 Portland Block.

(Endorsed:) Filed Jan'y 4, 1888.

And afterwards, to wit, on the 9th day of January, A. D. 1888, there was filed in said cause a certain replication, which is in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of Cook County, December Term, A. D. 1888.

PETERS, Receiver, &c., }
vs. } In Chancery.
R. W. HYMAN, JR., *et al.* }

The Replication of Complainant to the Answers of said Defendants.

112 This repliant, saving and reserving to himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answers of the said defendants, for replication thereunto say- that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answers contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is ready to avers, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

SMITH & PENCE,
Solicitors for Complainant.

And afterwards, to wit, on the 23rd day of March, A. D. 1888, there was filed in said cause a certain chancery notice and a certificate of publication, which are in the words and figures following, to wit:

Chancery Notice.

Smith & Pence, attorneys.

Chancery notice.

STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court of Cook County, September Term, A. D. 1887.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Virginia,

vs.

113 ROBERT W. HYMAN, JR., Administrator of the Estate of Robert W. Hyman, Deceased; Francis M. Hyman, Mary Martha Pender, Robert W. Hyman, Jr., Walter R. Hyman, Henry H. Hyman, Duncan H. Hyman, Mary Hatton Hyman, Hezekiah Brown, George E. Brown, Mary E. Norman, Sarah F. Chesson, Estelle Hunter, Kenneth Patton Hyman, Robert Francis Hyman, Victor Lee Hyman, Preston Eugene Hyman, Anna Minerva Hyman, James Patton Hyman, Ella D. Sherrod, Henry A. Barling and Edward D. Mandell and Edward H. Green, Trustees under the Last Will and Testament of Edward Mott Robinson, Deceased; Hetty H. R. Green, George L. Arps, Abner H. Davis, Theodore B. Hyman, Lafayette Hyman, Elizabeth Hyman, John Hyman, William Hyman, Claude B. Hyman, Lela Bodie, and Minetta Sherrod. } In Chancery. No. 62375.

Notice is hereby given to the said Francis M. Hyman, Mary Martha Pender, Walter R. Hyman, Henry H. Hyman, Duncan H. Hyman, Mary Hatton Hyman, Hezekiah Brown, George E. Brown, Mary E. Norman, Sarah F. Chesson, Estelle Hunter, Kenneth Patton Hyman, Robert Francis Hyman, Victor Lee Hyman, Preston Eugene Hyman, Anna Minerva Hyman, James Patton Hyman, Ella D. Sherrod, Henry A. Barling, and Edward D. Mandell and Edward H. Green, trustees, etc.; Hetty H. R. Green, George L. Arps, Abner H. Davis, Theodore B. Hyman, Lafayette Hyman, Elizabeth Hyman, John Hyman, William Hyman, Claude B. Hyman, Lela

L. Bodie, and Minette Sherrod that the above-named complainant heretofore filed his amended bill of complaint in said court on the chancery side thereof, and that summons thereupon issued out of said court against the above-named defendants, returnable on the first day of the term of the circuit court of Cook county to be held at the court-house in Chicago, in said Cook county, on the third Monday of November, A. D. 1887, as is by law required, and
114 which suit is still pending.

HENRY BEST, *Clerk.*

SMITH & PENCE, *Compl't's Sol'rs.*

Certificate of Publication.

I, Myra Bradwell, president of the Chicago Legal News Company, do hereby certify that a notice in the matter of William H. Peters, receiver, etc., *v.* Robert W. Hyman, Jr., etc., *et al.*, of which the annexed printed slip is a true copy, was published for four successive weeks, to wit, four times, in the Chicago Legal News, a weekly secular newspaper, published every Saturday in the city of Chicago, Cook county, and State of Illinois, of general circulation throughout said county and State, and specially authorized by law to publish legal notices in said city and county, and that the date of the first paper containing the same was the twenty-fourth day of September, A. D. 1887, and that the date of the last paper containing the same was the fifteenth day of October, A. D. 1887.

In witness thereof the president of said Chicago Legal News Company has hereunto affixed the seal of said company and subscribed her name, at the city of Chicago, this 15th day of Oct., A. D. 1887.

[CORPORATE SEAL.] MYRA BRADWELL, *President.*

And I further certify that said company has received eleven & $\frac{25}{100}$ dollars for publishing said notice.

MYRA BRADWELL,
Per OSCAR.

Oct. 19, '87.

And thereupon, to wit, on the 28th day of March and the 9th & 21st days of April, A. D. 1888, the following, among other, proceedings were had and entered of record in said court, to wit:

115 *Order, M'ch* 28, '88.

WILLIAM H. PETERS, Receiver, &c., *v.* ROBERT W. HYMAN, JR., Administrator, &c., *et al.*	62375, 2672.	Bill and Amended Bill.

On motion of solicitors for the complainant, it is ordered that this cause be, and it hereby is, dismissed out of this court as to Abner H. Davis.

Decree, April 9, '88.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Virginia, *vs.* ROBERT W. HYMAN, JR., as Administrator of the Estate of Robert W. Hyman, Deceased, and in Person; Francis M. Hyman, Mary Martha Pender, Walter R. Hyman, Henry H. Hyman, Duncan H. Hyman, Mary Hatton Hyman, Hezekiah Brown, George E. Brown, Mary E. Norman, Sarah F. Chesson, Estelle Hunter, Kenneth Patton Hyman, Robert Francis Hyman, Victor Lee Hyman, Preston Eugene Hyman, Anna Minerva Hyman, James Patton Hyman, Ella D. Sherrod, Theodore B. Hyman, Lafayette Hyman, Elizabeth Hyman, John Hyman, William Hyman, Claude B. Hyman, Lela L. Bodie, Minetta Sherrod, Henry A. Barling, Edward D. Mandell, and Edward H. Green, as Trustees under the Will of Edward Mott Robinson, Deceased, Hetty H. R. Green, and George L. Arps.	62375, 2672. Bill and Amended Bill.

116 This cause coming on to be heard upon the bill of complaint of complainant, the answers thereto of the defendants, with the exception of George L. Arps, and the replication of complainant to such answers, and upon the proofs, oral and documentary, taken and read, and it appearing to the court that due notice of the pendency of this suit was given to all of the defendants in this suit who were not residents of this State prior to the third Monday of November, 1887, by publication, in accordance with the statute in such case made, and that the bill of complaint has been taken as confessed as to the said George L. Arps for want of an answer, the court finds that it has jurisdiction of all the parties hereto and of the subject-matter of this suit; and it appearing to the court from the evidence that Robert W. Hyman, now deceased, who was the uncle of Robert W. Hyman, Jr., who is one of the party defendants hereto, in his lifetime and on or about the 20th day of June, 1864, purchase- for the joint account of himself and Edward Mott Robinson, since deceased, for the sum of fifteen thousand dollars ($15,000), the premises known as the undivided half of section twenty-one (21), township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian, situate in the county of Cook and State of Illinois; that the moneys which were then paid on account of the purchase of said premises were advanced by Edward

Mott Robinson; that at or about said last-mentioned date an agreement in writing was entered into between said Robert W. Hyman and said Edward Mott Robinson setting forth and defining the rights of said Robert W. Hyman and said Robinson in respect of the purchase so as aforesaid made, which said agreement was
117 dated the 20th day of June, 1864, and was executed by the said Robert W. Hyman and said Robinson and a copy of the same is set out in the bill of complaint herein; and the court doth further find from the evidence that in or about the year 1865 the said Robert W. Hyman, deceased, with the concurrence and assent of said Robinson, purchased for the joint account of himself and said Robinson the remaining undivided one-half of said section twenty-one (21), but that said purchase was not completed in the lifetime of said Robinson.

That said Edward Mott Robinson died on or about the 14th day of June, 1865, leaving a last will and testament, which was afterwards and on the 30th day of June, 1865, duly admitted to probate before Gideon J. Tucker, surrogate of the county of New York, in the State of New York.

That by the said will the said Robinson, after making certain devises and bequests of specific properties, not including the rights under said contracts, devised and bequeathed all the rest, residue, and remainder of his estate to Henry A. Barling, Abner H. Davis, and Edward D. Mandell, as trustees, and to the survivors and survivor of them, upon trust to receive the rents and profits thereof, and as to the personal estate to invest and reinvest the same and to apply the net income of such trust estate to the separate use of the daughter of said Robinson, namely, Hetty Howland Robinson, during her lifetime, and upon the death of said Hetty Howland Robinson to deliver over the capital of such trust estate to the issue of his said daughter, if any issue there should be surviving her, in such shares and proportions as the said Hetty Howland Robinson should appoint and direct by her last will and testament, and if she should make no direction or appointment, then to such issue in equal
118 shares, *per stirpes* and not *per capita*, and in case said Hetty Howland Robinson should leave no issue and should have made no direction or appointment, then, with the exception of the sum of four hundred thousand dollars ($400,000), to the heirs and next of kin of said Hetty Howland Robinson, and in such even- also to make distribution of said sum of four hundred thousand dollars ($400,000) to the several persons mentioned in said will or their issue.

Said testator nominated said Barling, Davis, and Mandell to be the executors of his said will. The said *Marshall* did not qualify as such executor, but said Barling and said Davis did on or about the 30th day of June, 1865, qualify and became the active executors thereof. Said Edward Mott Robinson left him surviving said Hetty Howland Robinson, his only child, and left no other child nor descendent of any child surviving him. Afterwards said Hetty Howland Robinson intermarried with Edward H. Green, who is a defendant in this suit, and is now Hetty H. R. Green.

In the year 1865, after the death of said Robinson, said Barling and Davis, as the executors of his said will, by and with the consent of said Hetty Howland Robinson, advanced and paid the purchase price, to wit, seventeen thousand and fifty dollars ($17,050), for the remaining or second one-half of said section.

Afterwards and in the year 1867 said executors, for the purpose of declaring the rights and interests of the several parties concerned, made a certain other agreement in writing with said Robert W. Hyman, which was dated the 24th day of September, 1867,
119 and was executed by the said Robert W. Hyman and said Barling and Davis, as executors, and is also set forth in the bill of complaint herein.

That from the 20th day of June, 1864, until the time of his death and from the 24th day of September, 1867, the said Robinson and the said executors of his will have advanced and paid all the moneys which have been paid on account of said section twenty-one (21), whether for the purchase price thereof or taxes or assessments or improvements charged against or made thereon or to remove or cancel claims against the same.

That during the lifetime of said Robert W. Hyman he managed and controlled said premises, and all such expenditures were made with his concurrence and approval and under and in pursuance of the said contracts so bearing date the 20th day of June, 1864, and the 24th day of September, 1867; and the court doth further find from the evidence that the said Robert W. Hyman was a member of the firms of Hymans & Dancy and Dancy, Hyman & Co., which said firms were engaged in business prior to the 5th day of July, 1884, in the cities of Norfolk, Virginia, and New York, in the State of New York; that the other members of said firms were the defendants Francis M. Hyman and George L. Arps; that said firms in the course of their business became indebted to the Exchange National Bank of Norfolk, Virginia, which was a banking corporation subsisting under the laws of the United States, in a large sum of money, and that on or about the 1st day of October, in the year 1883, it being desired on the part of said firms to obtain accommodation from said bank, said Robert W. Hyman made application to the said executors of the will of the said Edward Mott Robin-
120 son to hold one hundred thousand dollars ($100,000.00) of the proceeds of sale of said section twenty-one (21) when the same should be sold by way of pledge or security for the indebtedness which said firms or either of them should then be or come under to said bank, and in accordance with said request the said Henry A. Barling wrote and caused to be delivered to the said bank a certain letter, bearing date the 1st day of October, 1883, which letter was adopted and approved by the said Robert W. Hyman by his signature at the foot thereof and was in the words and figures following, to wit:

"NEW YORK, *Oct.* 1, 1883.

"Messrs. Jno. B. Whitehead, pres't; Geo. M. Bain, Jr., cashier, of the Exchange Nat'l bank, Norfolk, Va.

"GENTLEMEN: As the executor of the estate of E. M. Robinson, I hold, with my co-ext., Abner H. Davis, title to 640 acres land, being section 21, town of Cicero, Cook county, Illinois, under certain agreements made by and between Mr. Robinson during his lifetime and Mr. R. W. Hyman, and also between the executors and Mr. R. W. Hyman.

"Mr. Hyman is, upon a sale of said property, to receive one-half of the profits, as provided in said agreements, arising from such sale. Mr. Hyman has requested me that whenever a sale is made of said property, after paying all taxes, liens, and assessments, to hold for account of your bank such sum, not exceeding one hundred thousand dollars, as the firm of Hyman & Dancy,
121 Norfolk, Va., or Dancy, Hyman & Co., New York, may be owing to your bank at the time of realizing from such sale. This I hereby agree to do, Mr. Hyman joining me in the same with his approval.

"Very respectfully yours,

"HENRY A. BARLING, *Executor.*"

"I approve the above.

"R. W. HYMAN."

Afterwards and on or about the 5th day of July, 1884, the said Barling wrote and caused to be delivered to said bank a certain other letter, bearing date said 5th day of July, 1884, which was also concurred in, approved, and signed by said Robert W. Hyman and was in the words and figures following, to wit:

"NEW YORK, *July 5th*, 1884.

"Messrs. Jno. B. Whitehead, pres'd't, and Geo. M. Bain, Jr., cashier, of the Exchange Nat'l bank, Norfolk, Va.

"GENTLEMEN: As the executor of the estate of E. M. Robinson, I hold, with my co-ex'r, Abner H. Davis, a title to six hundred and forty acres of land, being section 21, town of Cicero, Cook county, Illinois.

"Under certain agreements made by and between Mr. Robinson during his lifetime and Mr. R. W. Hyman, and also between the executor- and Mr. R. W. Hyman, Mr. Hyman is, upon sale of said property, to receive one-half of the net profits, as provided in said agreements, arising from such sale.

"Mr. Hyman has requested me that whenever a sale is
122 made of said property, after paying all taxes, liens, and assessments, to hold for acconnt of your bank such sum, not exceeding one hundred thousand dollars, as may be found to be due to him.

"As Mr. R. W. Hyman, F. M. Hyman, and Geo. L. Arps, comprising the firms of Hyman & Dancy, Norfolk, Va., and Dancy, Hyman & Co., New York, *is* now about to be dissolved, but are still

owing said bank by their four several and joint notes for twenty-five thousand dollars each, payable twelve (12) months after the 5th of July, 1884, without interest, this understanding is to apply to the renewal of any part or the whole of said notes from time to time as may be agreed upon.

"This I hereby agree to, Mr. Hyman joining me in the same with his approval.

"Very respectfully yours,

"HENRY A. BARLING,
For Self and A. H. Davis, Ex'rs."

"I hereby approve the above.
"R. W. HYMAN."

That said letters are set out in the bill of complaint herein.

That at the date of said last-mentioned letter the indebtedness of said firms of Hyman & Dancy and Dancy, Hyman & Co. to said bank had come to be represented by four promissory notes for the sum of twenty-five thousand dollars each, bearing date the 24th day of June, 1884, payable twelve months after July 4th, 1884, to the order of George M. Bain, Jr., at the Exchange National bank, Norfolk, Virginia, and signed by Robert W. Hyman, Francis M. Hyman, and George L. Arps, and the letter last mentioned was intended to refer to the said notes and any renewals which might be made of the same, and that afterwards the said letters were
123 approved and confirmed by said Davis as the co-executor of said Barling.

That by the pledge so as aforesaid made by said Hyman the said executors became and were bounden to hold and apply one-half of the proceeds of said section twenty-one (21) which under the contracts so as aforesaid dated the 20th day of June, 1864, and the 24th day of September, 1867, should be payable to the said Hyman for the payment of the four notes aforesaid so bearing date the 24th day of June, 1864.

That there have been paid on account of said notes the following sums—that is to say:

On March 3rd, 1885	$5,000 00
On January 2nd, 1886	4.000 00
On September 2nd, 1886	2,000 00
On January 4th, 1887	2,000 00
On January 4th, 1888	3,300 00

Said notes are also entitled to a further credit of $5,619.08, with interest thereon amounting to 2.80, which said sum of five thousand six hundred and nineteen dollars and eight cents ($5,619.08) was on the 9th day of April, 1885, standing to the credit upon the books of said bank of W. W. Vicar, attorney and trustee.

Said notes are entitled to a further credit of eight hundred and ninety dollars and thirteen cents ($890.13), being for interest paid by said George L. Arps subsequently to August 1st, 1885.

And the court doth further find that the complainant is the

holder of two promissory notes executed by George L. Arps and payable to the order of complainant as receiver aforesaid, bearing date the 1st day of August, 1885, one for the sum of thirty-
124 three hundred dollars ($3,300.00), payable on the first day of January, 1889, and the other for the sum of three thousand two hundred and seventy-six dollars and eighteen cents ($3,276.18), payable on the 1st day of January, 1890, bearing interest at the rate of six per cent. from their date, which were given to the said complainant to be applied on account of said indebtedness to said bank, and that the complainant is willing to credit the amount of said last-mentioned notes, together with the interest thereon from the 1st day of August, 1885, which interest, amounts to the further sum of $1,057.66, and that the amount now due upon the said four notes so bearing date the 24th day of June, 1884, after allowing all proper credits of principal and interest, is the sum of eighty-three thousand four hundred and twenty-six dollars and thirty-five cents ($83,426.35); that on or about the 9th day of April, 1885, the said Exchange National Bank of Norfolk, Virginia, was found to be insolvent and was placed in liquidation under the direction of the Comptroller of the Currency of the United States; that William H. Peters was appointed receiver of said bank and qualified as such receiver on the 11th day of April, 1885, and on the 13th day of April, 1885, took charge of the assets of said bank as such receiver and has continued from thence hitherto in the discharge of his duties as such receiver.

That Abner H. Davis died in the year 1887, and said Barling is now the sole surviving executor of the will of Edward Mott Robinson; that Edward H. Green, the defendant herein, was duly appointed trustee in the place and stead of said Davis, and that said Barling, said Mandell, and said Edward H. Green are now
125 the trustees under the will of said Edward Mott Robinson and acting as such.

That the legal title to said section twenty-one (21) is in said Barling, Mandell, and Green, as trustees, and that they hold the same upon the obligations declared by said contracts of June 20th, 1864, and September 24th, 1867, and by way of pledge as to a portion of the proceeds thereof for the benefit of complainant as herein declared, and in other respects for the purposes mentioned in the will of said Edward Mott Robinson.

That there was, on the first day of January, 1888, due to Henry A. Barling, as executor of said Edward Mott Robinson, for advances made under said contracts and interest thereon, to be paid out of the proceeds of sale of said land, the sum of five hundred and five thousand four hundred and fourteen dollars and six cents ($505,414.06).

That at any time after the purchase of the same it was within the power of the trustees to cause said premises to be sold and the proceeds to be distributed; that a reasonable time has elapsed, and the complainant is now entitled to require the same to be sold in accordance with the prayer of his bill.

That on or about the 15th day of May, 1885, said Robert W.

Hyman died intestate, and that his heirs are the defendants herein, with the exception of said Barling, Mandell, Edward H. Green, Hetty H. R. Green, and Arps; that letters of administration upon his estate were, on or about the 30th day of June, 1885, issued out of the probate court of Cook county, in the State of Illinois, to Robert W. Hyman, Jr., who was appointed administrator of
126 said estate, duly qualified, and is now acting as such.

That the proceeds of sale of said section twenty-one (21), after paying the costs of this suit and the fees for and expenses of sale, should be distributed as follows—that is to say, out of the same there should first be paid to said Barling, as executor, the sum of five hundred and five thousand four hundred and fourteen dollars and six cents ($505,414.06), with interest thereon from said January 1st, 1888, at seven per cent. per annum to April 9th, 1888, the date and entry thereof, and thereafter at six per cent. per annum, the advance of said last-mentioned amount and such rates of interest thereon. One-half of the remaining proceeds thereof should be paid to said Barling, as executor, and out of the remaining proceeds, being the remaining half of the proceeds after the payment of said sum of five hundred and five thousand four hundred and fourteen dollars and six cents ($505,414.06), with interest, there should be paid to the complainant the sum of eighty-three thousand four hundred twenty-six dollars and thirty-five cents ($83,426.35), with interest from the date of this decree at the rate of six per cent. per annum, and the remainder should be paid to said Robert W. Hyman, Jr., as administrator as aforesaid.

And after hearing counsel for the respective parties to this suit, with the exception of said Arps, and the court being now fully advised, it is therefore ordered, adjudged, and decreed that the joint adventures so entered upon in the lifetime of said Robert W. Hyman and said Robinson, and evidenced by said contracts of June 20th, 1864, and September 24th, 1867, be wound up and closed, and that if the amount so found to be due to complainant shall not be paid by the defendants or some of them, with the interest thereon,
127 within twenty days from this date, section twenty-one (21) aforesaid be sold by George Bass, one of the masters of this court, for the purpose of distribution of the proceeds of sale in accordance with the findings herein made. The amount so found to be due to complainant may, with interest, be paid to Smith & Pence, their solicitors. The said master shall give four weeks' notice of the time and place of such sale by advertisement in one of the newspapers published in the city of Chicago once in each week; that said sale be made for cash.

That the said premises shall be offered for sale by said master in tracts of ten, twenty, forty, or more acres, and any portions not so sold in smaller tracts, or the whole of said section if no portion of the same shall be sold, shall be offered for sale by said master.

That each bidder at such sale shall, as an earnest of his bid, be required to deposit with said master twenty per cent. of the amount thereof before the same or any portion thereof shall be struck off to him, and the balance thereof shall be payable when such sale

shall have been confirmed by this court and a deed shall be made by said master. At said sale any of the parties to this suit may bid and become purchasers as individuals and divested of their trust relations. The master is directed to report to this court with all convenient speed his doings in the premises, and the court reserves the right to reject any and all bids if said premises shall not produce the sum of six hundred thousand — and for other supposed cause and the entry of an order of distribution until the coming in of said report.

128 And it is further ordered, adjudged, and decreed that nothing herein contained shall operate to impair or lessen the right of said complainant to enforce as against and collect from the said Arps the amounts of the two notes made by him, with the interest thereon from their date, so bearing date the 1st day of August, 1885, and payable respectively on the first days of January, in the years 1889 and 1890, for thirty-three hundred dollars ($3,300) and three thousand two hundred and seventy-six dollars and eighteen cents ($3,276.18), with interest at six per cent. per annum.

And it is further ordered, adjudged, and decreed that the sale so as aforesaid to be made, when confirmed by this court, and the deed or deeds to be made in pursuance thereof shall operate to vest in the purchaser or purchasers respectively all the right, title, interest, and claim of any of the parties to this suit in or to said section twenty-one (21) and as an extinguishment and discharge of any right or claim of lien thereon as trustee or otherwise on the part of said Barling, Mandell, or Edward H. Green; and it is further ordered that if upon a sale to be made in pursuance of this decree said section twenty-one (21) shall not produce the sum of six hundred — dollars ($600,000) said bill of complaint shall be dismissed at complainants' costs without prejudice to his right to enforce said indebtedness so due to him, but not against said section twenty-one or under the pledges to said bank so made as aforesaid by said Robert H. Hyman.

And thereupon the defendants, by their solicitors, pray an appeal to the appellate court in and for the first district, which is granted on condition that the defendants do, within forty days from

129 date, execute and file a good and sufficient appeal bond in this cause in the penal sum of ten thousand dollars, with surety to be approved by the court.

And forty days from date is granted the defendants in which to prepare and file a certificate of evidence herein.

Decree, Ap'l 21, '88.

WILLIAM H. PETERS, Receiver,
vs.
ROBERT W. HYMAN, JR., Administrator, *et al.* } 62375, 2672. Bill.

In this cause, it being on this day suggested to the court by counsel that there is now due upon section twenty-one (21), mentioned in the pleadings and decree in this cause, the sum of three

thousand eight hundred and sixty-eight dollars and thirty cents ($3.868.30) or thereabouts for the taxes and assessments of the year 1887 upon said land, and that if the same be not paid on or before the 1st of May, 1888, a penalty is liable to accrue in addition thereto, it is ordered by the court that in case Henry A. Barling, as executor or trustee under the will in said bill mentioned, pay the said taxes or any other or future taxes or assessments hereafter accruing upon said land prior to the sale thereof by the master under the decree of the court herein, the amounts of all such payments by the said Barling, together with interest to the time of sale, shall be allowed by the said master and payable out of the first proceeds of such sale in addition to the sum of five hundred and five thousand four hundred and fourteen dollars and six cents ($505,414.06), with interest as mentioned in said decree.

130 And thereupon, to wit, on the 23rd day of April, A. D. 1888, there was filed in said court a certain certificate of evidence, which is in the words and figures following, to wit:

Certif. of Evidence.

In the Circuit Court of Cook County.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Virginia,
v.
ROBERT W. HYMAN, JR., *et al.*

This is to certify that the above-entitled cause came on to be heard upon the pleadings and proofs at the March term, A. D. 1888, and that the depositions of William H. Peters, George L. Arps, W. W. Vicar, and Henry A. Barling and the affidavit of W. W. Vicar, with stipulation attached, were read in evidence upon the hearing of said cause, together with the exhibits and documents attached to said depositions and affidavit. The examinations-in-chief and redirect examinations of the witnesses were read on the part of the parties respectively who produced the same, and the cross-examinations were likewise read on the part of the respective opposing parties, and the exhibits and documents attached to such depositions and affidavits were offered by the parties respectively who are shown by said depositions and stipulation to have produced the same, and the same, whereever copies, were received in lieu of the original without objection to copies as such.

131 It is hereby stipulated by and between the parties hereto, by their respective counsel, T. S. Garnett, Esq., for the plaintiff, and Messrs. Paddock, Aldis and Wright and James E. Heath, Esq., for the defendants, that the testimony to be given herein may be taken in short-hand and reduced to writing by Kenton C. Murray, a notary public for the city of Norfolk, who is also agreed to be substituted in the place and stead of Wm. H. White, the commissioner named in the foregoing commission; and it is also hereby

stipulated that all and any objections to the several interrogatories to be propounded and the answers thereto for incompetency, immateriality, and irrelevancy may be reserved to the hearing herein as if now specifically urged.

T. S. GARNETT,
Of Counsel for W. H. Peters, Rec'r.
PADDOCK, ALDIS & WRIGHT AND
HAMMONSON & HEATH,
Counsel for R. W. Hyman, Jr., Adm'r of R. W. Hyman, Dec'd.

132 The depositions of William H. Peters, George L. Arps, and W. W. Vicar, witnesses of lawful age, produced, sworn, and examined upon their several corporal oaths, on the 12th day of January, in the year 1888, at the office of White and Garnett, in the city of Norfolk, county of Norfolk, State of Virginia, by me, Kenton C. Murray, a notary public of said city and State, who is substituted by agreement of the parties and their counsel for William H. White, commission-, duly appointed by *dedimus postestatem* or commissioner issued out of the clerk's office of the circuit court of Cook county, with the seal of said court affixed thereto, and to said William H. White directed as such commissioner, for the examination of said witnesses in a certain suit and matter in controversy now pending undetermined in the said circuit court of Cook county, wherein William H Peters, receiver of the Exchange National Bank of Norfolk, Virginia, is plaintiff and R. W. Hyman, Jr., administrator of R. W. Hyman, deceased, *et al.* are defendants, in behalf of the said William H. Peters, receiver, &c., as well upon the cross-interrogatories of the defendants as on the interrogatories of the plaintiff and upon none others.

The said WILLIAM H PETERS, a witness for the plaintiff, being duly sworn by Kenton C. Murray, previous to the commencement of his examination, to testify the truth, as well on the part of the plaintiff as the defendants, in relation to the matters in controversy between the said plaintiff and defendant-, so far as he should be interrogated, testified and deposed as follows:

133 Present: White & Garnett, counsel for plaintiff; Harmanson & Heath and Paddock, Aldis & Wright, for defendants.

Examined by Judge GARNETT:

Q. 1. State your name, age, residence, and occupation.
A. William H. Peters; seventy-one; Portsmouth, Virginia; at present receiver of the Exchange National Bank of Norfolk, Va.

(It is admitted by counsel that William H. Peters is the receiver of the Exchange National bank, and was so appointed on April 9th, 1885, and qualified April 11th, 1885.)

Q. 2. When did you take charge of the assets of the bank, and have you continued to act as receiver thereof from that date to the present time?

A. I took charge of the bank on the 13th of April, 1885, as receiver and have continued in the discharge of the duties up to the present time.

Q. 3. State what indebtedness you found among the assets of said bank due by R. W. Hyman to the said bank and how the same was evidenced and do you still hold the same.

A. I found four notes, dated June 24th, 1884, for $25,000 each, payable twelve months after, July 5th, 1884. Those four notes aggregated one hundred thousand dollars. I here produce the original four notes, signed by R. W. Hyman, F. M. Hyman, and George L. Arps.

(The notary is here requested to make and certify copies of the same as a part of my deposition, the originals to be again produced on the hearing, and to make also copies of all endorsements on said notes.)

(Copies are marked Ex-ibit- A, B, C, and D, with this deposition.)

Q. 4. Examine the endorsement- of said notes and state whether the same correctly show the credits properly allowable on ac-
134 count of the said notes and whether the balance, after allowing the said credits, is still due and owing to you as receiver of said bank.

A. I have examined the credits upon one of the notes, dated June 24th, 1884, for $25,000, and find the credits there given to be all that are allowable as credits on the debt of Hymans & Dancy, and the balance remaining unpaid is the amount now due, with interest.

Q. 5. State now what security you found on taking charge of said bank for the payment of these notes, and, if in writing, produce the evidence thereof and say whether or not the original writings now produced by you are correctly set forth in your bill as plaintiff in the said cause.

A. I here produce the original agreement, which I found in the assets of the bank when I took charge. I have compared the papers with the bill and they are correctly set forth ; they are correct copies of the original papers.

(The notary is requested to make and certify copies of the originals and file the same as a part of my deposition, the originals to be produced upon the hearing. The first of the original papers is dated October 1st, 1883, and signed by Henry A. Barling, executor, and approved by R. W. Hyman, and addressed to John B. Whitehead, president, and George M. Bain, Jr., cashier, of the Exchange National Bank of Norfolk, Virginia, marked here Ex-ibit E. The second is dated July 5th, 1884, and is addressed to John B. Whitehead, president, and George M. Bain, Jr., cashier, of the Exchange National Bank of Norfolk, Virginia, and signed by Henry A. Barling for himself and A. H. Davis, executors, and approved by R. W. Hyman, marked Ex-ibit *E*.)

Q. 6. Have you any correspondence with Henry A. Barling, executor, touching the matters enquired of, and do you know his sig-

nature and is the signature to the papers just examined by you his genuine signature?

A. I am not familiar with the signature of Mr. Barling except so far as the information derived from letters received from him in answer to letters from myself make me so, but, in comparing his signature to the agreement already produced with his signature to the letters received from him, it is my belief that the agreements were signed by him, Henry A. Barling.

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Q. 7. Please examine the copy of the bill filed by you as receiver in this cause, and in connection therewith examine the two papers now produced and compare the same with the agreement- set forth in said bill, dated June 20th, 1864, and Sept. 24th, 1867, respectively, and say what you know as to the originals of said papers and whether the same are correctly set forth in your said bill.

A. I have examined the papers produced and compared them with the bill and find that they are correctly set forth in the latter. The original papers are in the possession of Mr. Barling, who sent me certified copies of the same under the seal of a notary. I here file the letter of Mr. Barling, dated March 1st, 1886, enclosing copies of the originals and showing that Mr. Barling has the originals in his possession. (The notary is requested to file this letter, copied in the deposition and designated as Ex-ibit G.)

Q. 8. Please state now what the sum total balance due on the said four notes is as of the fourth of January, 1888, and file a copy of the account as taken from the receiver's books.

A. $90,778.42 as of January 4th, 1888. I here file a copy of the account as taken from the receiver's books. (Marked Ex-ibit H.)

Cross-examination.

Examined by Judge HEATH:

C. Q. 1. What amount was due on the four several notes above referred to in your deposition, in principal money, at the time you took charge of the Exchange National bank as receiver?

A. I will have to look at the statement of account; $95,000 were due when I took charge as receiver, and there was a balance to the credit of the trustee of Hymans & Dancy on the book of $5,619.08, which was applied as an offset and which left a balance of $89,380.92.

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C. Q. 2. As of what date was the last payment mentioned, $5,619.08, endorsed on said note?

A. July 2nd, 1885.

C. Q. 3. Why was it not endorsed prior to that time?

A. Because it could not be applied without an offset check to be given by the party to whose credit it was, W. W. Vicar, trustee of Hymans & Dancy.

C. Q. 4. The last payment, then, of $5,619.08, was made by W. W. Vicar, trustee for Hymans & Dancy?

A. By his check on a credit balance of his at the bank. Of course, I could not apply it to the credit unless I had the check of the party to whose credit it stood.

C. Q. 5. Was it not understood from the beginning of your management of the said bank as receiver that that sum was to be a credit upon the said indebtedness of Hymans & Dancy to the said bank?

A. There was no such understanding with me, but upon a reference to the account and upon inquiry I found that this amount was to be applied by Vicar, trustee, to the credit of Hymans & Dancy's indebtedness.

C. Q. 6. What payments have been made by W. W. Vicar, as trustee for Hymans & Dancy, to you as receiver of said bank upon said indebtedness since you assumed control of its affairs as receiver? Please give amounts and dates.

A. The first payment was the offset check before referred to of July 2nd, 1885, the $5,619.08, which was to the credit of Vicar, as trustee; the second was of January 2nd, 1886, $4,000; the next was September 10th, 1886, $2,000; the next was January 4th, 1887, $2,000, and the next January 4th, 1888, $800.

137 C. Q. 7. Has the payment of $800 on January 4th, 1888, been endorsed by you as a payment upon said indebtedness?

A. It is included in the amount of the last payment, $3,300; I think that is the amount.

C. Q. 8. Why was that embraced in the sum of $3,300?

A. It was paid by Mr. Vicar, as was the balance of the $3,300, on account of Mr. Arps' compromise settlement.

C. Q. 9. It was paid by Mr. Vicar, as was the balance of the $3,300, on account of Mr. Arps' compromise settlement; by what authority were the assets of Hymans & Dancy in the hands of their trustee applied to the compromise settlement of Mr. Arps?

A. By order of the United States circuit court authorizing the same.

C. Q. 10. Will you please produce to be filed with your deposition a copy of said order and all the proceedings upon which the same is based?

(Objection by counsel for the receiver only so far as is required the production of the record at his expense; if counsel for the defendants will produce such record at their cost it will be accordingly filed, it being a matter of record and accessible to them.)

A. I have no certified copy of the record, but I have a copy that my clerk made from the record, which I will produce, if desired; its correctness can be ascertained by comparison with the record.

C. Q. 11. Produce that copy.

A. Here is the petition to the court setting forth the terms of the proposed compromise, the petition of George L. Arps, and the order of the court authorizing the compromise signed by R. W. Hughes, judge.

(Marked Exhibit J.)

C. Q. 12. Please state who are the parties to that petition.

A. The petition is, of course, signed by William H. Peters,
138 receiver, and accompanying it is the proposition of Mr. Arps, which is signed by him.

C. Q. 13. Did I understand you to say that W. W. Vicar, as trustee for Hymans & Dancy, made the payment of $3,300 endorsed upon the note as of January 4th, 1888?

A. W. W. Vicar, as trustee, paid over to me $800, and the balance of the payment of $3,300 was in checks of George L. Arps, but handed me by Mr. Vicar.

C. Q. 14. Then the endorsement upon the note ought to have been $800 from W. W. Vicar, as trustee for Hymans & Dancy, and $2,500 from George L. Arps in payment of his compromise, should it not?

A. Not under the order of court as I understood it; the amounts paid by Vicar, as trustee, were to be applied to the credit of George L. Arps' indebtedness as well as to the credit of Hymans & Dancy.

C. Q. 15. Do I understand you to say that under an order of the court to which Messrs. F. M. Hyman and R. W. Hyman were in nowise parties their money was taken and appropriated to the payment of a debt due by George L. Arps to you, as receiver, upon a compromise made with you by him under the order of the court?

A. The amounts paid to me by Vicar were applied to the payment in part of the indebtedness of Hymans & Dancy, of which R. W. Hymans, F. M. Hymans, and George L. Arps were partners, and also to the credit of George L. Arps under the order of the court.

C. Q. 16. The effect of that, then, is, as I understand, to credit the indebtedness of F. M. and R. W. Hyman, and also to credit the indebtedness due by Arps upon his compromise; do I understand you correctly?

A. Yes, sir; and, as will be seen by the order of court, whatever other sums George L. Arps may pay under his compromise settlement will be applied to the credit of Hyman & Dancy indebtedness.

C. Q. 17. Please state what sums George L. Arps has paid
139 in pursuance of the compromise referred to.

A. The amount of $11,300 has been paid to me through Mr. Vicar, of which amount $8,350, as I understand it, was paid by Vicar as trustee.

C. Q. 18. You have charged yourself with the amount received from Vicar as trustee, have you not?

A. Yes, sir.

C. Q. 19. You have credited the indebtedness upon the four notes referred to in this deposition with said payments, have you not?

A. Yes, sir.

C. Q. 20. I perceive from the copy of the order of the court referred to in your deposition that you are authorized to receive from George L. Arps one note for $4,000, payable January 1st, 1886, and endorsed by H. Vaughn; one note for $4,000, payable January 1st, 1887, and endorsed by H. Vaughn; one note of $3,300, payable January 1st,

1888, not endorsed; one note for $3,300, payable Jan. 1st, 1889, not endorsed, and one note for $3,276.18, payable January 1st, 1890, not endorsed, all to bear interest from their date and secured as set out in said petition. Have you received from him the said notes; and, if so, will you please file copies thereof as a part of your deposition in this case?

A. I have received the notes mentioned, the first three of which, to wit, one of $4,000, paid Jan. 2nd, 1886, and surrendered; another for $4,000, paid Jan. 4th, 1887, and surrendered, and one for $3,300, paid Jan. 4th, 1888, and surrendered. The remaining notes unpaid are in my possession, and copies will be filed with this deposition, marked Ex-ibit K.

C. Q. 21. And the foregoing payments were made, as I understand you, not by George L. Arps, but by W.W.Vicar as trustee aforesaid?

A. They were paid through W. W. Vicar as trustee, and, as I said before, a portion of the payments were made by Vicar as trustee and the balance handed me by Vicar in checks of George L. Arps.

140 C. Q. 22. In your petition you set forth that the firm of Hymans & Dancy, of Norfolk, and Dancy, Hyman & Company, of New York, are indebted to the Exchange National Bank of Norfolk in the sum of $89,380.82 as of the 5th of July, 1885; will you please state whether said indebtedness, after having been credited with the amounts paid by W. W. Vicar as trustee, should not also be credited with the notes given by Arps in his compromise with the bank when said notes shall have been paid?

A. Yes, sir; if the debt of Hymans & Dancy is not sooner paid the notes of Arps when paid will be credited to Hymans & Dancy's indebtedness. The terms of the compromise distinctly provide that I shall retain the security which I have for Hymans & Dancy's indebtedness until the said indebtedness is paid. It was also understood that the agreement with R. W. Hyman was in no way to be affected by the compromise with Arps except so far as the amounts received by me under this settlement with Arps should be applied to the credit of Hymans & Dancy's indebtedness to the bank.

C. Q. 23. Who was that understanding with?

A. With Mr. Arps.

C. Q. 24. Have the notes given by Arps and which have now fallen due been credited in addition to the amounts received from Mr. Vicar as trustee?

A. Yes, sir; credits are endorsed upon one of the $25,000 notes.

C. Q. 25. In examining those credits I do not find the facts to be as stated. Will you please show the additional credit on the Arps notes to that made by W. W. Vicar as trustee?

A. I have nothing to show except the amounts that were paid to me through Vicar, $11,000 some hundred, of which, as above stated, $8,350 was paid to me by Mr. Vicar as trustee.

C. Q. 26. As I understand, Mr. Vicar as trustee has paid you since you took charge of the bank $14,419.08?

A. That includes the offset check.

C. Q. 27. Mr. Arps, under your petition and under the de-
141 cree of the circuit court of the United States, was to pay you $17,876.18, which was twenty per cent. of the indebtedness as of the time of filing said petition. Now, then, the $17,876.18, with interest thereon, according to the terms of the compromise, when paid in full should be credited upon the indebtedness of R. W. and F. M. Hyman and George L. Arps to the Exchange National bank in addition to the credit of payment made by Mr. Vicar as trustee, amounting to $14,419.08; is not that so?

A. I think that is not the terms of the compromise. The compromise with Mr. Arps contemplated the payment to me of whatever sums Mr. Vicar should collect as trustee under the assignment of Hymans & Dancy, and which when collected were to be applied to the credit of Hymans' and Dancy's notes as well as to the credit of Arps' notes. I would like to add that at the time of this settlement my impression was that the claims in Vicar's hands as trustee were of little value.

C. Q. 28. Is it true that the indebtedness of Arps upon his compromise with you was to be paid out of the assets of Hymans & Dancy in the hands of their trustee, and not by Mr. Arps individually?

A. Mr. Arps was a member of the firm of Hymans & Dancy, which firm I regarded as insolvent and Mr. Arps as little less so. The only security I had for the large indebtedness of Hymans & Dancy was a half interest in a piece of land in or near Chicago, which I ascertained to be of little more value at the time than was necessary to pay the advances made by Mr. Robinson, of New York, who jointly owned the same with Mr. R. W. Hyman, and that is making the compromise with Mr. Arps I thought I was securing more than I otherwise could have secured from the members of the firm of Hymans & Dancy, to wit, R. W. and F. M. Hyman and George L. Arps.

Questions repeated. Is it true that the indebtedness of Arps upon his compromise with you was to be paid out of the assets of Hymans & Dancy in the hands of their trustee and not by Mr. Arps individually?

142 A. As far as those assets in the hands of Mr. Vicar would go they were to be applied to the payment of Arps's notes, and also to the indebtedness of Hymans & Dancy.

C. Q. 29. Then, if the assets in the hands of Vicar as trustee should be sufficient to discharge the indebtedness of Arps upon his compromise made with you as receiver, Arps would pay nothing towards that compromise except his proportion of said assets as a member of the firm of Hymans and Dancy; is that true?

(Counsel for plaintiff objects to the form of this question as argumentative, and for the terms and effect of said compromise insists that the record called for by the defendant and here produced is the best and only competent evidence of said compromise.)

A. If the amounts paid by Vicar should be sufficient to pay the compromise settlement with Mr. Arps and the interest thereon the

notes of Arp would be surrendered, as I would have no further claim on him under the compromise, but should look to the security which I have for Hyman & Dancy's indebtedness, of which Mr. Arps' was a part. The amounts thus paid by Mr. Vicar would of course be credited on Hymans' & Dancy's indebtedness.

C. Q. 30. My question calls for an affirmative or negative answer. Will you please state whether or not if the amount in the hands of Mr. Vicar as trustee for Hymans & Dancy should be sufficient to discharge the indebtedness of Arps made with you as receiver of the bank, Arps would have anything to pay individually except what might be his interest in the assets in the hands of said Vicar as trustee?

A. No, sir.

C. Q. 31. In the three notes which have been paid and surrendered has Arps paid anything except what interest he had in the assets in the hands of Vicar as trustee?

A. Yes, sir; he has paid the difference between the amount received from Vicar as trustee, which I have stated to be $8,350, and the amount of those three notes with interest thereon.

143 C. Q. 32. You have produced a paper signed by Mr. Harling, executor of Edward Mott Robinson, as a security, which came to hands as receiver for the Exchange National bank, for the debt of $100,000, evidenced by the four notes of $25,000 each, signed by R. W. Hyman, F. M. Hyman, and George L. Arps. Please state whether any other securities came to your hands for said indebtedness; and, if so, what said security was.

A. I had no other security than the paper you mention.

C. Q. 33. Did you not hold or was not the assignment to Vicar, trustee, under your control and subject to your order as a security for the said indebtedness?

A. I understood an assignment had been made to Vicar as trustee for the benefit of the Exchange National bank, but that assignment was not in my possession, and, as I said before, my impression was, from conversations with both Mr. Vicar and Mr. Arps, that a very small amount would be realized under that deed to the bank.

C. Q. 34. Were not the assets, whatever they were, embraced by said deed to Vicar subject to your order or under your control?

A. As I said before, I have never seen the assignment deed and have never had it, and I know nothing more of it than was told me — the trustee, Mr. Vicar. My impression was that it was of very small value.

C. Q. 35. Please state what information Mr. Vicar, the trustee, gave you concerning the paper or instrument of writing under which he was acting.

(Counsel for the receiver objects to this question and all questions touching instruments in writing without first offering to produce the writing or accounting for its absence.)

A. He said he was the trustee under the assignment of Hymans & Dancy, and whatever he had collected up to that time had been

deposited in the bank to his credit as trustee, and that such collections as he should make thereafter, which I understood him
144 to be very small, would be paid over to me.

C. Q. 36. That assignment was then in fact, as you understood, for the benefit of the Exchange National bank, was it not?

A. Yes, sir.

C. Q. 37. And he has paid over to you, so far as you know, all sums collected by him under and by virtue of said assignment, has he not?

A. He has paid over to me some $8,350, I think it is.

C. Q. 38. In addition to the $5,619.08?

A. The $5,619.08 is an offset check, an offset to the account before, and I have no reason to doubt that this is all he has collected. Of this, however, he is himself better able to answer.

C. Q. 39. Have you made any dispositions of any interest that you had in the assets of R. W. Hyman, F. M. Hyman, and George L. Arps, the makers of said notes, or any of them? If so, please state what that disposition was and how and when it was made.

A. In accepting the notes of George L. Arps under the compromise I, as receiver, renounced all claims to a lot of doubtful claims due said firms and now in the hands of W. W. Vicar, retaining the bank's claim on a tract of land near Chicago, and also its right to proceed against the other debtors for the balance of said indebtedness.

C. Q. 40. Will you please give a list or statement of the doubtful claims which the bank renounced at the time of the compromise with Mr. Arps?

A. I cannot, as I have not such a list in my possession.

C. Q. 41. Have you had such a list in your possession ever?

A. No, sir; I relied upon the statement of Mr. Vicar, the trustee, that they were of doubtful value. He has never made any return to me as trustee further than the payment of certain amounts before given in my testimony.

C. Q. 42. Do you know or could you approximate at the
145 time the value of said claims in the hands of Mr. Vicar as trustee?

A. I did not, nor can I estimate their value, except by the general impression that they were of but little value.

C. Q. 43. Did you undertake to ascertain the value of said assets at the time of the renouncement aforesaid?

A. Nothing to verify a statement which Mr. Vicar had made that I had no reason to doubt that they were of little value.

C. Q. 44. Will you please take the copy of the order of the court filed with your deposition and point out the provision thereof which authorizes you to surrender the assets of Hymans & Dancy to George L. Arps?

A. The petition upon which the order was granted prayed for the renunciation of those claims, and that petition was granted, but such release was not to operate to discharge either of the other makers of said notes. The order provides "that such other au-

thority and power is hereby given said receiver as is necessary to carry out the compromise in said petition as set forth."

C. Q. 45. Do you know what proportion of the assets assigned to Mr. Vicar, of Hymans & Dancy, have been collected?

A. I do not.

C. Q. 46. Were you informed what amount probably would be collected?

A. No, sir; except, as I have said before, I was given to understand that it would be a very inconsiderable amount.

C. Q. 47. Can you state what the difference is between the amount paid by Mr. Vicar and the twenty per cent. which Mr. Arps agreed and undertook to pay?

A. The difference between $8,350 and $17,876.18, which is $9,526.18, and the interest upon the notes.

C. Q. 48. If you will add together the amounts which you have received from Vicar, trustee, since you took charge of the bank and calculate twenty per cent. upon the indebtedness due to the
146 bank upon which Arps made a compromise, what would be the difference between the amount of his compromise and the payments which Mr. Vicar has made to you?

A. Is not that statement I have just made an answer to that question?

C. Q. 49. Please add together the payments which you have received from Mr. Vicar and say what they amount to.

A. I say that is an answer to the question. Please state wherein it is not, and I will endeavor to answer.

C. Q. 50. What I want to know is the sum total of the payments made by Mr. Vicar, trustee, to you; then I want to know what is the amount of Mr. Arps' payments at twenty per cent. of the indebtedness then existing.

A. $17,876.18 I make to be twenty per cent. of the indebtedness of Hymans & Dancy at the time of the compromise.

C. Q. 51. Now, put together the payments you have received from Vicar, as trustee, and say what they amount to.

A. I said $8,350 received from Vicar direct.

C. Q. 52. You did not include the $5,619.08 paid you on July the 2nd, 1885?

A. That is not included; that was an offset check, as I stated; a balance to the credit of Mr. Vicar which was applied.

C. Q. 53. Now, then, is the $800 paid you January 4th, 1888, included in that $8,350?

A. Yes, sir.

C. Q. 54. I understand that you have received by the check of Vicar this $5,619.08, July 2nd, 1885, which was then put to his credit in the Exchange National bank?

A. Yes, sir; I applied that as an offset both to the indebtedness of Hymans & Dancy and George L. Arps.

See last page.

147 C. Q. 55. Please state the amount of payments received from

payments made to you authorize said payments to be applied otherwise than upon the indebtedness of Hymans & Dancy to that bank?

A. I do not know that he distinctly authorized it, but it was done with his knowledge and consent.

Q. 76. In what way did he consent?

A. He consented by having knowledge of the fact that it was so to be applied and did not object.

Q. 77. You told him, then, that the payment- which he made to you were to be applied to the individual indebtedness of Arps to you?

A. I do not know that I distinctly told him that, but I am satisfied that he fully understood it and that a credit should also be given to Hymans & Dancy's note.

Redirect examination:

It is stipulated between parties and their co-nsel that the copy of the record in the matter of the petitions of Wm. H. Peters, receiver, for compromise with Geo. L. Arps, called for by counsel for the defendants and produced in answer to cross-question 11 of the deposition of Wm. H. Peters, is correct copy of the said petition and the order thereon of the United States court at Norfolk, and that the same may be authenticated hereafter by either party and used if so properly authenticated.

See Ex. J hereto annexed and duly authenticated.

K. C. MURRAY, *Com'r.*

151 R. D. 1. You have stated on cross-examination that your petition and the order of court thereon in the matter of compromise with Geo. L. Arps prayed for and allowed you as receiver of the bank to renounce all claims to a lot of doubtful claims due said firms of Hymans and Dancy and Dancy, Hymans & Co. then in the hands of W. W. Vicar. Please state whether this was done by you, and then examine question 22 of your cross-examination and your answer thereto and say whether or not you mean to imply that the whole compromise amount, to wit, $17,876.18, together with the further amount of $8,350, or any other sum realized from those doubtful claims in Vicar's hands, should both together be applied as a credit on the four notes in controversy.

A. I do not know that I understand the question, but I can tell you what I should suppose should be done in that case. That any amount I may receive from Vicar, be it more or less than the amount compromised for with Arps, to wit, $17,876.18, will be carried to the credit of Hymans and Dancy's indebtedness, and if the amount should be equal to or should exceed the amount of Arps' indebtedness under his compromise notes it would also be applied to their payment.

R. D. 2. But would you credit the four notes with the face of Arps' compromise, $17,876.18, and the further sum realized from the doubtful claims in Vicar's hands both together upon the debt?

A. No, sir. I should credit the amounts received from Vicar on Arps' notes to the extent of their amount, and in case the amount was in excess of Arps' notes I should credit that excess to Hymans & Dancy's notes.

R. D. 3. You say in effect that whatever amount you have received from Vicar you have applied to the credit of Hymans & Dancy and Dancy, Hyman & Company, and also allowed it as credit on Arps' notes?

152 A. Yes, sir.

R. D. 4. So that, as far as you know, the notes in controversy have received the benefit of whatever assets were in the hands of Vicar as trustee or attorney for the late firms. Is that so?

A. It is so far as those assets have been accounted for to me; yes.

R. D. 5. Have the terms of your compromise with Arps been strictly carried out and according to the record of that compromise above filed?

A. As I understand it, yes; certainly in conformity with the compromise with Mr. Arps.

R. D. 6. Do you still hold the later notes given by Geo. L. Arps in evidence of that compromise, together with his bond, with a power of attorney to confess judgment thereon for the whole amount of the indebtedness of Hymans and Dancy and the other securities agreed to be pledged with you as receiver?

A. Yes.

(A copy of the power of attorney and a list of the securities filed herewith and marked Exhibits M and N.)

Recross-examination:

Q. 1. You have stated that the money received from Vicar, trustee for Hymans & Dancy, has been applied as credits upon the notes of Hymans & Dancy and also in extinguishment of notes given you by Geo. L. Arps in his compromise with you, and that the amount of the compromise of said Arps is not to be deducted in addition to said money received from Vicar from the indebtedness of Hymans & Dancy and Dancy, Hyman & Company, as evidenced by the four notes of twenty-five thousand dollars each to the bank. Do you think it is just and right to take the money of R. W. Hyman and F. M. Hyman and apply it to the payment of an indi-

153 vidual debt of George L. Arps, releasing him from his joint liability with F. M. Hyman and R. W. Hyman and holding them for the face of said indebtedness, less whatever their assets may have paid?

A. It is in accordance with the order of court and the terms of compromise settlement with Geo. L. Arps, and in my judgment it is no injustice to the remaining members of the firm of Hymans & Dancy, because it is just so much paid by one of the members of the firm—namely, Arps—on that indebtedness of Hymans & Dancy.

Q. 2. How paid?

A. Paid by the trustee who has in charge assets belonging to the firm of Hymans & Dancy and by Geo. L. Arps in his individual

capacity in case those assets are not sufficient to pay Arps' obligation.

Q. 3. The truth of the whole thing being that Mr. Arps' compromise is paid out of the assets belonging to F. M. Hyman, R. W. Hyman, and Geo. L. Arps. Is not that so?

A. Any payment if applied to the credit of the indebtedness due by Hymans & Dancy, of which firm Geo. L. Arps was a member at the time the debt was incurred.

Q. 4. The court has released, upon your petition, based upon Geo. L. Arps' letter to you, the said Arps from the payment of this indebtedness due to the bank by R. W. Hyman, F. M. Hyman, and Geo. L. Arps upon his paying twenty per cent. of that indebtedness. That twenty per cent. has been paid, or the larger part of it, from the assets of R. W. Hyman, F. M. Hyman, and Geo. L. Arps. Is that not so?

A. $8,350 have been paid to me from the assets of Hymans & Dancy.

154 Re-redirect examination:

Q. 1. Is Mr. Arps' release conditioned upon his payment of his note given in compromise, and upon his failure so to do have you his bond with power of attorney to confess judgment for the whole claim, and has any release been yet granted him?

A. Yes. His release is conditioned upon the payment of the whole claim, and on his failure to do so I have a power of attorney confessing judgment, and no release will be given him until his indebtedness is paid.

Re-recross-examination:

Q. 1. His release from what is conditioned?

A. The obligation to give bond and power of attorney to confess judgment of the whole, but in case he fails to pay the last note, when I have power to confess judgment.

Q. 2. Now, then, if Arps should pay his individual notes given in compromise of said indebtedness out of the assets of Hymans & Dancy and Dancy, Hyman & Company, then Arps is released, so far as the bank is concerned, from all liabiiity on account of the joint indebtedness of George L. Arps, F. M. Hyman, and R. W. Hyman to the said bank—that is, his release is complete and perfect. Is that not so?

A. If the notes of Arps are paid by Arps or by Vicar, the trustee, from the assets in his hands, then all claim on Arps would cease and the notes be surrendered.

Adjourned until 10 o'clock Jan. 13th at the same time and place.

After finishing the above deposition Mr. Peters asks to add the following to his testimony:

155 I deem it proper to add to my testimony relative to the compromise settlement with George L. Arps, one of the partners of the late firm of Hymans & Dancy, the following: I

keep an interest account, in which I enter all items of interest collected by me. The amounts paid by Arps to me for interest on his compromise notes are entered in this account, but are not credited on Hyman & Dancy's indebtedness, though the principal of those notes is. On reflection I am satisfied that Hymans & Dancy's indebtedness should also be credited with these interest items, and I have now caused the same to be done. These items are:

Interest paid Jan. 2, 1886	$100 00
Interest paid Jan. 4th, 1887	309 43
Interest paid Jan. 4th, 1888	480 70
	$890 13

I desire to correct my answer to question 54 of my cross-examination, so that the said answer shall read as follows:

That check was allowed by me as an offset to the indebtedness of Hymans & Dancy on July 2d, 1885, which was prior to the compromise with Geo. L. Arps.

Further deponent saith not.

WM. H. PETERS.

156 JAN. 13TH, 1887.

Pursuant to adjournment these depositions resumed at the office of White & Garnett, at ten a. m.

Present: White & Garnett, for the receiver; Harmonson & Heath and Paddock, Aldis and Wright, for the defendant-.

Counsel for the receiver, having filed copies of the originals of H. A. Barling executor's letters, dated Oct. 1st, 1883, and July 5th, 1884, respectively, which copies are marked Exhibit- E and F, with the answer to question number 5 of the direct examination of Wm. H. Peters, here call upon the defendants' counsel to produce the originals of Exhibits 1 and 2 filed with Ex. "G," the same having been shown to be in the possession of H. A. Barling, executor, one of the defendants, that the same may be read in evidence upon the hearing of this cause.

GEORGE L. ARPS, a witness for the plaintiff, being duly sworn, testified as follows:

Examined by Judge GARNETT:

Q. 1. What is your name, age, residence, and occupation?

A. George L. Arps; forty-five; Norfolk, Virginia; merchant.

Q. 2. Were you a member of the late firms of Hymans & Dancy and Dancy, Hyman & Company, and who were your copartners?

A. I was. My copartners were R. W. Hyman and F. M. Hyman.

Q. 3. Please examine the four original notes referred to in the answer to question 3, direct examination of W. H. Peters in this cause, and state whether the same are signed by yourself and your said copartners and are the genuine notes of the three indi-

157 viduals whose names appear thereto.

A. I have examined the notes and find that they are.

Q. 4. State whether or not the said notes are the same held at the time of its failure by the Exchange National Bank of Norfolk, Virginia, and what amount is due thereon, after allowing the credit entries on one of said notes as appears thereby.

A. They are the same notes held by the Exchange bank at the time of its failure, and the amount due the said bank at the time of its failure on said notes was $89,380.92, after crediting $5,619.08, which was to the credit of the trustee in the Exchange bank at the time of its failure. The balance of the credits since that time have been:

January 2nd, 1886	$4,000
Sept. 10th, 1886	2,000
Jan. 4th, 1887	1,550
Jan. 4th, 1887	450
Jan'y 4th, 1888	3,300

If the interest is calculated correctly on the account which is marked Exhibit H with the deposition of Mr. Peters the balance due on said notes is $90,778.42.

Q. 5. Do you know the genuine signature of Henry A. Barling and R. W. Hyman? If so, please examine Exhibits E & F, filed with the deposition of Wm. H. Peters in this case, and say whether the signature of Henry A. Barling and R. W. Hyman to the said writings respectively are the true and genuine signatures of the said Henry A. Barling and R. W. Hyman.

A. I do know the signatures of Henry A. Barling and
158 R. W. Hyman. I have examined the Exhibits E and F and find the signatures on them to be their signatures.

Q. 6. Please examine the record called for by defendants' counsel of the petition of Wm. H. Peters, receiver, for leave to compromise with you your indebtedness to him as such receiver, and state what you have done in performance of your undertaking to pay the part assumed by you of the indebtedness of R. W. Hyman, F. M. Hyman, and George L. Arps to the bank, evidenced by these four notes.

A. I have examined the record and I have complied with the order of court up to the present time—that is to say, I have paid my notes, one for four thousand dollars, due Jan. 1st, 1886, and another note for four thousand dollars, due Jan. 1st, 1887, and one for thirty-three hundred dollars, due Jan. 4th, 1888.

Q. 7. The balance of your said notes, then, remain unpaid; is that so?

A. That is so.

Q. 8. State whether the payments made by you on account of your said compromise are also correctly endorsed on one of the four original notes above proved.

A. Yes, sir; all these payments have been endorsed on one of the notes of R. W. Hyman, F. L. Hyman, and Geo. L. Arps as credit.

Cross-examination:

By Judge HEATH: Please state what interest you had in the two firms of Hymans & Dancy and Dancy, Hyman & Company.

A. My interest was forty per cent.

—. Q. 2. What interest did the other copartners have?

A. I don't remember, but I think it was thirty-five to R. W. Hyman and twenty-five to F. M. Hyman. That's my impression.

159 C. Q. 3. You stated that you complied with the order of court obtained upon the petition of Wm. H. Peters, receiver, upon your letter filed as an exhibit with his petition. Please state how and when you so complied.

A. Well, I complied first by executing my notes, having 8,000 dollars of them endorsed by U. Vaughan, and having further complied by paying such notes as they became due.

C. Q. 4. How did you pay them—by check or otherwise?

A. The first $4,000, which was the first note, was paid by W. W. Vicar, and, I believe, by his check. The second note, which was for $4,000, was paid partly on Sept. 10th, 1886, by Mr. Vicar, and then, on the first of Jan. or the 4th, $1,550.00 more of said note was paid by Mr. Vicar, and, I believe, all the balance, but it occurs to me it was $450. The balance of that note was paid by me—I don't know exactly how—with my own check or some ones else's check or how. Then, on Jan. 4th, 1886, I paid by my check and another check endorsed by me—a check I happened to have not belonging to my business—$2,962 and $800 by Mr. Vicar, making a total of the note due on that day of $3,300 and the interest thereon for two years and five months

C. Q. 5. Then the note of Hymans & Dancy for $25,000 has not been credited with the full amount which you paid Mr. Peters?

A. The note of Hymans & Dancy has been credited with the amount of my note, but the interest does not appear to have been credited.

C. Q. 6. The interest which you have paid upon your individual notes given by way of compromise has not been credited in any instance, has it, upon the indebtedness of Hymans & Dancy to said bank, evidenced by said four notes?

A. Not as evidenced by endorsements on those notes.

160 C. Q. 7. Have Hymans & Dancy been credited upon that debt in any other way than by the endorsements which appear upon said notes; have any other amounts than the amounts endorsed upon said notes been credited?

A. Not that I am aware of, but I suppose the interest account is a separate account in some way. I do not know how the receiver keeps it.

C. Q. 8. Will you please state how much interest money you have paid to William H. Peters upon your individual notes given in compromise of said debt?

A. I cannot state. I do not remember.

C. Q. 9. Cannot you ascertain?

A. I think so.

C. Q. 10. Please do, and file a statement of the interest so paid with your deposition.

(Marked Exhibit O.)

C. Q. 11. You say that your note of four thousand dollars Jan'y 1st, 1886, was paid by W. W. Vicar, and, you believe, by his check?

A. Yes.

C. Q. 12. Did you have any funds to your credit in the hands of W. W. Vicar at the time of said payment?

A. By the terms of the compromise made with Mr. Peters and confirmed by the court I was entitled to apply to my note such collections as could be realized from the accounts of Hymans & Dancy and Dancy, Hymans & Company in the hands of W. W. Vicar as trustee, at the time of the payment of the first note, a sufficient amount had been realized from those assets to pay that note of mine. Mr. Vicar paid and took up my note, and had endorsed a like amount as a credit on the notes of R. W. Hyman, F. M. Hyman, and George L. Arps.

C. Q. 13. Did you direct Mr. Vicar as trustee of Hymans & Dancy to pay your individual note given in compromise of your indebtedness to the bank?

A. Mr. Vicar was my clerk and book-keeper and transacted that business on my behalf as my clerk, as well as on his own
161 behalf as trustee of Hymans & Dancy.

C. Q. 14. Did you direct Mr. Vicar, as trustee of Hymans & Dancy, to pay your individual note given in compromise of your indebtedness to the bank?

A. I have answered the question.

C. Q. 15. Please state whether or not you directed Mr. Vicar, as trustee of Hymans & Dancy, to apply the assets in his hands as such trustee to the extinguishment of your individual note given in compromise of your indebtedness to the bank.

A. I have answered the question and cannot make it any plainer.

C. Q. 16. Let the question be repeated. I want an affirmative or negative reply. (Question repeated.)

A. I consider the reply that I have already made as answering the question.

C. Q. 16½. Question again repeated and counsel asks for an affirmative or negative reply.

A. I cannot give an affirmative or negative —, because I do not remember. Mr. Vicar was my clerk, and I directed him to go. I don't know whether I directed him or not. He is a very efficient man, and looked after my business. I do not know whether I told him or not. I know it was understood and acknowledged by him that the money he collected was to come to me, and, as my note was due on that day, he went to the bank to settle He took the money he had and applied it. Whether I said to Mr. Vicar, You go and pay that or not, I don't remember.

C. Q. 17. When Mr. Vicar paid the $4,000 and took up your note, the said $4,000 was credited on the indebtedness of Hymans & Dancy evidenced by the said four notes. With that sum of $4,000 he paid in part the indebtedness of Hymans & Dancy, and also with the same $4,000 paid in full your individual note which fell
162 due Jan. 1st, 1886, did he not?

A. Yes, sir.

C. Q. 18. In other words, with one dollar he paid two dollars?

A. If you put it in that way; yes, sir.

C. Q. 19. Do you know how the interest on that four-thousand-dollar note which fell due Jan. 1st, 1886, was paid? If so, please state.

A. I do not remember.

C. Q. 20. Was it paid?

A. I do not remember whether it was or not. I imagine it was, if there was any interest on this note. They carry interest from date. I will ascertain that and embody it in a statement to be given Mr. Murray, the notary.

C. Q. 21. If it was paid by check, please produce the check.

A. All right.

C. Q. 22. Did Mr. Vicar ever agree to pay out of the assets in his hands, as trustee for Hymans & Dancy, your individual indebtedness to the bank arising from the compromise that you made?

A. Mr. Peters, receiver, had authorized Mr. Vicar, in writing, to pay me the proceeds of collection from the assets of Hymans & Dancy, and on that authority Mr. Vicar agreed to do so. Not that I remember in words, but from the fact that he did so, I considered that he agreed to it.

C. Q. 23. Have you that authority in writing made by Mr. Peters? If so, please file with your deposition.

A. I have the authority in writing and will file a copy to be certified by the notary. (Exhibit P.)

C. Q. 24. Have you any correspondence or papers in your possession or under your control other than those already referred to bearing upon the questions which have been propounded to you in this examination? If so, please produce them.

A. I have not any.

C. Q. 25. Did you ever give any order, in writing, bearing
163 upon the question of assets in the hands of Mr. Vicar, upon Mr. Vicar, in favor of any person? If so, please state when and file said order to be copied by the notary in this cause.

(Question objected to for irrelevancy.)

A. Yes; I endorsed on that order to Mr. Vicar to pay—I made an endorsement on that order to Mr. Vaughan to pay to U. Vaughan those assets to protect him in his endorsement of my note, and the order has that endorsement on it and will show for itself. I do not know exactly whether it is an order or not, but I will produce it and you can see. (This is Exhibit P.)

C. Q. 26. Have you now or did you have at the time of your compromise with Mr. Peters any schedule or other data in your possession or under your control as a member of said copartnership showing what the assets and liabilities of said two firms amounted to?

(Objected to for irrelevancy.)

A. I have not at this time such access to the knowledge of the affair of the firms named, but at the time of making this compro-

mise I did have access to the balance-sheet of Hymans & Dancy and Dancy, Hyman & Company for the reason, as stated before, that the trustee was with me at the time transacting his business as trustee in my office.

C. Q. 27. Can you furnish the notary, to be filed with your deposition, a statement of said assets?

A. No; I cannot.

C. Q. 28 Why not?

A. Because I have not access to them and do not remember.

C. Q. 29. Who has charge of them?

A. Mr. Vicar, and he does not stay with me any more. He is in business to himself.

C. Q. 30. Have you stated in full all the dealings and correspondence had between yourself and Wm. H. Peters, receiver of the
164 Exchange National bank, with reference to said notes held by him as receiver?

A. I have.

C. Q. 31. Have you had any correspondence, whether individually or as a member of said firms, with Mr. Peters other than that filed with his petition?

A. I have not, sir.

C. Q. 32. Did you ever hold or have any interest in any funds or assets of the makers of the said four notes sued on in this case under an assignment made by said makers for the benefit of creditors?

A. If you will explain what you mean I may answer.

C. Q. 33. I mean did you ever have or hold any interest in any assets due to Hymans & Dancy or Dancy, Hyman & Company under and by virtue of any assignment which they made for the benefit of creditors of theirs.

A. Not that I am aware of; certainly not. Mr. Vicar had control of the assets. I had no control of them.

C. Q. 34. If you ever made any disposition or know of any disposition being made of the assets of Hymans & Dancy or Dancy, Hyman & Company, please state when or by what endorsement or endorsements the same was made and by whom made.

A. I do not understand that question and do not know how to answer it. At the dissolution of the firm of Hymans & Dancy and Dancy, Hyman & Company the assets of said firms by mutual agreement were placed in the hands of W. W. Vicar, he being familiar with the business, having been book-keeper for the late firm for several years, with instructions how to apply those proceeds. It was done by a writing which all joined in. I have not a copy.

C. Q. 35. Now, what has become of the assets of Hymans & Dancy, if you know, which went into the hands of Mr. Vicar under the instrument to which you have referred?

A. Such of the assets as have been collected by Mr. Vicar
165 have been paid to Mr. Peters. I cannot say that $8,300 is the exact amount, because Mr. Vicar is entitled to some compensation, and I presume there is in his hands some small amount, but $8,300 of those assets have been paid to Mr. Peters and endorsed on the notes of R. W. Hyman, F. M. Hyman, and Geo. L. Arps.

C. Q. 36. At the time you had access to the balance-sheet of the insolvent firms were you informed or did you know as to the probable value of the assets of said firms?

A. Of course I did not know what the value of those assets were; they were uncollected accounts, principally—some of the disputed accounts, and of very uncertain value.

C. Q. 37. What would you say was the probable value of the said assets?

A. I thought that I should probably realize for those assets five thousand dollars; I must say that they have turned out more than I ever expected to realize from them.

C. Q. 38. At the time of your letter to Mr. Peters or at any other time did you communicate to him the probable value of said assets?

A. I stated to Mr. Peters in substance what I have just stated to you in regard to those assets. I told him the nature of the accounts and I really did not know what I could get out of them, and, as I said, they have turned out much better than I at that time had any idea they would.

C. Q. 39. And you did not give him any statement or schedule of said accounts or claims, nor did you state to him what you supposed would probably be realized therefrom, did you?

A. I gave him no statement, nor am I certain that I informed him what I expected to realize or might realize from them.

166 C. Q. 40. Is that in correction of your answer that you informed him they might realize five thousand dollars?

A. My memory is not clear as to whether I mentioned any value of those assets to Mr. Peters or not.

C. Q. 41. It was the subject of conversation between you, wasn't it?

A. Often; yes; several times in the course of the progress of this business. Whether I put any value on them to Mr. Peters I cannot say positively that I did or did not.

C. Q. 42. Will you state if you know how twenty per cent. of the indebtedness at the date of July 5th, 1885, came to be the basis of a compromise with you individually?

A. I cannot say by what process that was arrived at. I proposed it as being, I thought, all I would be able to pay. I had gone to New York and been informed by Mr. Henry A. Barling that the land of Mr. Hymans in Chicago would not then sell for enough to pay Mr. Robinson's debt which was upon it—the assessments and costs of the land—and I wanted to relieve myself of this debt, naturally, and I went to see Mr. Peters, and he told me that I could make a proposition to see what could be done and that he would consider it. I made him a proposition, and after some considerable delay it was finally accepted.

C. Q. 43. Have you stated in your examination how your individual notes of four thousand dollars, due Jan. 1st, 1887, endorsed by U. Vaughan, was paid?

A. Yes; paid by Mr. Vicar; I have stated that.

C. Q. 44. Was that note paid by Mr. Vicar, under your direction, with the as-ets of the insolvent firms?

A. I had no right to direct Mr. Vicar, who was the trustee, in

anything; he had authority from Mr. Peters to pay over to
167 me that money; he was my clerk, and I sent him to the bank to take up my note with that money. Had he not been my clerk and been in business for himself, as he is now, I should have gone there and gotten this check and gone with him probably to Mr. Peters, paid my note, and made this endorsement exactly as it is, but he was in my employ and went up there himself and did it.

C. Q. 45. The fact is, then, that you did not at that time direct him, as the trustee of the insolvent firms, to pay your note due January 1st, 1887?

A. I did not so direct him.

C. Q. 46. What interest was due on that note at that time?

A. I cannot remember; I will give a statement.

C. Q. 47. Will you please give us those original notes which you took up, that they may be copied and filed here?

A. I will if I have them. I suppose I have them.

C. Q. 48. Your note of $3,300, payable June 1st, 1888, of which you say Mr. Vicar, as trustee, paid $800—did you direct him, as trustee of said insolvent firms, to pay $800 of your individual note out of the assets of said firms?

A. It depends upon what you call directing. Mr. Vicar informed me that he had $800 of the collected assets of Hymans & Dancy, and I then informed him that the balance—enough to take up my note—I would pay myself. So he went to the bank and figured the interest and telephoned me what the balance was, and I sent my young man up there with a check and got the note.

C. Q. 49. Did you or did you not direct him?

A. You can call that directing or not. I do not say that I directed him; I have no directions over him.

C. Q. 50. In your letter to Mr. Peters and in his petition
168 you speak and he speaks of your being assisted in this matter by friends. Have not the assets of Hymans & Dancy which are referred to in said petition been your best friends in this settlement?

A. I did not speak of the assets of Hymans & Dancy being friends. The friend I referred to principally was Col. U. Vaughan. I think he was my best friend in the matter.

C. Q. 51. He has not paid anything, has he?

A. No, but he became responsible.

C. Q. 52. Did Mr. W. W. Vicar ever agree with you personally to pay these several individual notes of yours out of the assets of the insolvent firms?

A. No, sir. He agreed with me personally to pay me the collections from those assets; he agreed to that.

C. Q. 53. When did he make such an agreement as that?

A. I say by agreement; I mean he told me so.

C. Q. —. When did he tell you?

A. After the papers were completed he said when he collected this money he would turn it over to me; that he had authority to do so.

C. Q. 55. When did he so state? Can you approximate the date?

A. No, sir; it is not likely that I should remember an order to pay me money. I had an order on him from Mr. Peters—the order before referred to.

C. Q. 56. You stated that Mr. Vicar promised the proceeds of those assets to you as they should be realized?

A. Yes, sir.

C. Q. 57. Is that in writing?

A. No, sir.

C. Q. 58. Has he done so?

A. He has paid my notes, which had been practically the same paying me. He has paid some eight thousand three hundred dollars.

C. Q. 59. How has he paid your notes?

169 A. He was the medium of taking up my notes, the first two notes at least, when in my employ.

C. Q. 60. Did Mr. Peters deliver your notes over to Mr. Vicar as trustee?

A. No, sir; not as trustee, but he delivered them to Mr. Vicar.

C. Q. 61. You have stated that you did not instruct or direct Mr. Vicar to, as trustee, pay your individual notes in the former part of your examination; you now state that he did so pay them.

A. Mr. Vicar as trustee did not pay my notes; I stated distinctly that Mr. Vicar was my clerk, and a payment from the proceeds of the assets of Hymans & Dancy was paid by him, as trustee, on the notes of F. M. Hyman, R. W. Hyman, and George L. Arps, and that money, properly being mine, paid my note also.

C. Q. 62. You will not say, Mr. Arps, that it was by him applied to your individual note as trustee of Hymans & Dancy?

A. No, sir: suppose Mr. Vicar in my office had turned over to me $4,000 of the money he had collected of the assets of Hymans & Dancy by giving me his check, and then I had sent him with that check to take up my note, that would be the practical effect of the transaction.

C. Q. 63. Did he pay you his check as trustee of the insolvent firms?

A. No, sir; in fact he did not. He drew a check and went up to the bank, made these payments, and took up my note; it was recognized by Mr. Peters as money that I was entitled to, but of course assets of Hymans & Dancy, and had to be applied to their credit.

C. Q. 64. In other words, the case you have just supposed was purely hypothetical and no such thing took place?

A. No case took place in my office.

170 Redirect examination:

R. D. 1. Please state whether the instrument of writing by which the assets of Hymans & Dancy were turned over to W. W. Vicar was intended by your firm to be recorded and whether the same is in the hands of W. W. Vicar, if you know.

A. It was intended to be recorded, and it is in the hands of Mr. Vicar.

R. D. 2. You state that at the time of your compromise with the receiver and as a part of such compromise the uncollected assets in Vicar's hands were agreed to be turned over, or the proceeds thereof, as they were collected, to you; now say whether or not you have any reason to doubt that Mr. Vicar has properly done so, and what is the probable value of the uncollected and doubtful claims remaining in Vicar's hands to be so collected and applied?

A. I think Mr. Vicar did that business very well, indeed; I am very much pleased myself with the way it was done—the way he collected those claims; as to what the value of the remaining claims is I am not able to say; they are a lot of claims which he has not been able to collect up to the present of insolvent people. I would not give one thousand dollars, certainly, for all that is left, though some other people might. For instance, there is a judgment here and one there which might some time be worth something, but at present, as far as any information I can obtain, they are worthless.

R. D. 3. What would you take for your interest in those uncollected claims, the balance?

A. I would take one thousand dollars, and be very *glad* to get it.

R. D. 4. I mean, what would you take for all the proceeds of the assets remaining in W. W. Vicar's hands yet to be collected?

A. I will sell them for one thousand dollars to anybody.

171 R. D. 5. Are your copartners, F. M. Hyman and R. W. Hyman, insolvent?

A. I believe so. I do not know about R. W. Hyman — this piece of land. I could not say he is insolvent, but I believe that F. M. Hyman is insolvent. I do not know that I ought to say it. I do not know it.

R. D. 6. You have spoken in your cross-examination of the land near Chicago, in the proceeds of which R. W. Hyman's estate is interested. Do you mean by this section 21, town of Cicero, and is this the land mentioned in the receiver's petition and your letter which is a part thereof as the land on which the receiver expressly retained his lien in favor of the Exchange National Bank of Norfolk, Virginia?

A. Yes, sir; it is.

R. D. 7. And was it also your express intention in said compromise that the receiver should retain all his rights to proceed against R. W. Hyman's interest in said land and against your copartners, F. M. Hyman and R. W. Hyman?

(Question excepted to, as the record will show what the intention was.)

A. Certainly it is a part of the record there.

Recross-examination:

Q. 1. Counsel for defendants, without waiving any objections made to question 7, redirect examination, propounds the following: You have stated that it was the intention of the compromise that the liability of F. M. Hyman and R. W. Hyman and the interest of

R. W. Hyman in the land mentioned in Chicago or near Chicago should not be affected by your compromise. Did you not say to Mr. R. W. Hyman, Jr., on yesterday that your understanding was that upon the payment of your compromise F. M. Hyman
172 and R. W. Hyman would be released individually and as members of said firm on account of said indebtedness to the bank?

A. No, sir; I said no such thing, most emphatically.

Q. 2. I understood you to say in response to a question from Judge Garnett that, in your judgment, the uncollected assets in the hands of Mr. Vicar, trustee, are not worth more than a thousand dollars.

A. Yes, sir.

Q. —. Is that of your forty per cent. in those assets or all?

A. I mean all the assets.

Q. 4. How did you get that information?

A. I know pretty much what they are—a lot of old insolvent claims. I am willing to sell them for a thousand dollars.

Q. 5. How have you had access to the balance-sheet recently to obtain such information?

A. I have not looked — the balance-sheet, I don't think, in two years; still I remember the principal accounts, and I say I am willing to sell the whole of them for a thousand dollars.

Further deponent saith not.

GEO. L. ARPS.

173 W. W. VICAR, a witness for the plaintiff, being first duly sworn, testified as follows:

Examined by Judge GARNETT:

Q. 1. What is your name, age, residence, and occupation?

A. W. W. Vicar: thirty-eight; Norfolk, Virginia; merchant.

Q. 2. Have you the instrument in writing under which you took charge of the assets of Hymans & Dancy and Dancy, Hyman & Company, as trustee and attorney, and proceeded to collect the same? If so, produce it.

A. I have, and I here produce the original paper and ask leave to file a copy to be certified by the notary and filed as an exhibit with this deposition. (Marked Exhibit Q.)

Q. 3. I observe that this paper is dated July 7th, 1884, and is signed by one witness, H. L. Watts, and has a certificate dated May 17th, 1887, that it was admitted to record upon the acknowledgment of H. L. Watts, the witness thereto. Was this paper lodged for record for the first time on that day May 17th, 1887, in the clerk's office of the city of Norfolk?

A. Yes, sir.

Q. 4. It appears by the record of the petition of William H. Peters, receiver, heretofore filed in these depositions, that upon accepting the compromise with George L. Arps, therein mentioned, the receiver should renounce all claims to a lot of doubtful claims due

said firm and then in the hands of W. W. Vicar. Did the receiver, Mr. Peters, accordingly renounce all claims to those uncollected assets in your hands and authorize their payment by you to Mr. Arps or for his benefit?

A. Mr. Arps showed me an order of Mr. Peters on me to pay or turn over to him the proceeds of all collections made for the benefit of the bank. This order I did not accept.

174 Q. 5. State what you did with such collections as you received after that order was given you and what amount of such collections you made.

A. I paid the amount over to William H. Peters, receiver, on account of the four joint notes of twenty-five thousand dollars each of R. W. Hyman, F. M. Hyman, and Geo. L. Arps. The amount so paid was $88,350 in the aggregate.

Q. 6. Did you at the same time see that the amounts were credited on the four notes you have mentioned when paid to Mr. Peters?

A. I think I saw all the credits made except the one of $800 paid Jan. 4th, 1888. Mr. Peters told me that Mr. Ott, his book-keeper, was out of the city and had the key to the safe and he could not get at the papers to make the credit.

Q. 7. And did you at the same time see that the notes or any of them then maturing of Geo. L. Arps given in evidence of his compromise were taken up and *reited* as they fell due?

(Objection made to the form of the question by defendants' counsel.)

A. I do not know how I can answer that without going into detail. I know that some of them were retired at that time and others I had no knowledge of. I mean some of those that had matured. The last one I did not see retired or taken up.

Q. 8. Have all the collections made by you since the date of the compromise with Arps, less whatever expense you have incurred in making them, been applied as credits on the said four notes of R. W. Hyman, F. M. Hyman, and Geo. L. Arps?

A. All except a little cash balance in hand in bank and probably two or three amounts that belonged to other people that the firm was indebted for.

175 Q. 9. Now, as to the balance uncollected of those doubtful claims, can you form any estimate of their probable value? If so, please state it.

A. I have no idea how much more will be realized; the older the claims get the more uncertain their collection.

Q. 10. What was your estimate of their value at the time of the compromise?

A. I did not form any.

Q. 11. Have they realized more or less than you anticipated?

A. I think rather more.

Q. 12. Is it not considerably more?

A. No; I don't think so.

Q. 13. Of your knowledge of those claims and the difficulty and uncertainty attending their collection, what, in your judgment,

would be a fair price if you were a purchaser thereof to pay for them now—that is, for the balance to be collected?

A. I should not want to buy them in the first place, and it's very hard to determine what would be collected. I should have to look into the matter in detail somewhat before I could answer that question.

Q. 14. Cannot you say what you would be willing to pay if you were willing to purchase at a fair price?

A. I might be willing to pay more after looking into the matter than just at a venture now. I do not think I would lose any money if I were to buy them at one thousand dollars.

Q. 15. Would you be willing to give more than that?

A. No, sir; although a great deal more might be realized.

176 Cross-examination:

C. Q. 1. Was that paper produced by you at the request of counsel for the plaintiff the authority under which you acted and the only authority which you acted on in reference to the collection of the claims and debts mentioned in the said paper and as to their dispositions?

A. It was an authority, but not the only one. I have another paper by which certain guano accounts and fertilizers remaining unsold were assigned to me in trust to pay certain indebtedness incurred in the purchase of said guano, the residue to be paid into the Exchange National Bank of Norfolk for the account of R. W. Hyman, F. M. Hyman, and Geo. L. Arps, and the paper is here produced and the notary is here requested to make a copy to be certified and filed with this deposition (Exhibit R).

C. Q. 2. Those two papers constituted, then, your authority in the premises, and by them you have been guided in the management of the trust which was committed to you by the parties executing said papers, were you not?

A. Yes, sir.

C. Q. 3. In the payments which you have made to Mr. Peters as receiver of the Exchange National, under and by virtue of the authority aforesaid, did you take from him any evidences of said payment? If so, please produce them so the notary may make copies thereof and attach to your deposition.

A. I will take such evidences of payment and I produce the receipts which are copied, compared, and certified with this deposition. (Marked Exhibit S.)

C. Q. 4. Did you ever authorize or agree that the amounts which you paid under and by virtue of the authority aforesaid
177 should be applied to the payment of Geo. L. Arps' individual indebtedness to Wm. H. Peters, receiver of the Exchange National bank?

A. I was not called on to authorize nor agree. I did not, however, object. It was not my matter.

C. Q. 5. The money which you paid you paid to reduce the in-

debtedness of Hymans & Dancy and Dancy, Hyman and Company to the Exchange National bank, did you not?

A. Yes, sir.

C. Q. 6. And you had no authority from the parties who constituted you agent and trustee to apply it in any other way, had you?

A. I did not so think I had from the papers.

C. Q. 7. About the time of the compromise of Mr. Arps with Mr. Peters did you have any conversation with Mr. Peters as to the character of the assets in your hands and as to the amount and probable value thereof?

A. Yes, sir; at Mr. Peters' request I called on him and he asked me about the value of the assets and what I expected to get from them, and I told him I could not tell then; my impression is that he asked me if I thought I could realize as much as four or five thousand dollars from them, and I gave him to understand that I had very little doubt about that.

C. Q. 8. Did you ever agree with Mr. Peters or with any one else to give to George L. Arps the benefit of the assets in your hands or coming to your hands as trustee for Hymans & Dancy and Dancy, Hyman and Company under and by virtue of the powers aforesaid to be credited upon said Arps' individual obligation?

A. I was not called on to agree or disagree. It was a matter between Mr. Arps and Mr. Peters as to what he should derive
178 from the payment made by me.

C. Q. 9. Mr. Arps, in his testimony given in this case this morning, stated as follows in answer to question 22, cross-examination: "Mr. Peters, receiver, had authorized Mr. Vicar in writing to pay to me the proceeds of collection from the assets of Hymans & Dancy, and on that authority Mr. Vicar agreed to do so, not that I remember in words, but from the fact that he did so, so I considered that he had agreed to it." Is it true that you agreed to apply the assets in your hands to the payment of the individual indebtedness of Mr. Arps or that you did so apply them?

A. I paid over the assets on account of the firm notes. I did not know that I had anything to do with Mr. Peters' application of them to Mr. Arps' notes, nor should I object to such application if he wished to make it. As I stated before, that was a matter of agreement between Mr. Arps and Mr. Peters.

179 C. Q. 10. As I understand, then, you paid over according to the directions of your trust to the notes of Hymans & Dancy and Dancy, Hyman & Company, and you never agreed or authorized or considered that you had anything to do with what Mr. Peters did with the money that you took his receipt for and paid to him to be applied, as you say, to the debts of Hymans & Dancy and Dancy, Hyman & Company. Do I understand you correctly?

A. Yes.

C. Q. 11. I understand you to state distinctly, Mr. Vicar, that you never directed Mr. Peters to apply the money which you paid him to

the discharge of the individual debt of — Geo. L. Arps' individual debt or not?

A. No, sir; I made no formal authorization of such a thing.

C. Q. 13. Did you make any informal authorization?

A. None that I know of.

C. Q. 14. You speak of having attended to Mr. Arps' matters after having made your payment on account of Hymans & Dancy's note while you were clerking for Mr. Arps up to Sept. 1st, 1886. Do I understand you to say or did you mean to imply that you made any payment out of the assets in your hands as trustee or attorney to the individual indebtedness of Mr. Arps due to Mr. Peters as receiver upon his compromise with Mr. Peters?

A. My payments were made, as I have stated before repeatedly, on the firm notes. I had knowledge of the fact, however, that Mr. Peters did allow Mr. Arps credit also for those payments.

180 C. Q. 15. I suppose you knew or had information of the decree obtained in the circuit court of the United States by Mr. Peters or Mr. Arps in compromise of the indebtedness due to the Exchange bank, did you not?

A. I heard that a compromise had been made. I do not know anything about the papers in detail, what their form was.

C. Q. 16. Did you ever act under that compromise or decree?

A. I cannot tell; I do not know.

C. Q. 17. Did you shape your action in any way with reference to that compromise or decree?

A. No, sir.

C. Q. 18. Mr. Vicar, can you furnish a statement of the amount of the assets which came into your hands under the two papers which you have filed here belonging to Hymans & Dancy and Dancy, Hyman & Company?

A. It would be quite an elaborate statement and would take a long time to make it. I have not one at hand.

181 C. Q. 19. Approximately, what would those assets amount to?

A. I cannot give that. Some had a money value and some a cotton value. I am not able to divide the two.

Redirect examination:

Q. 1. Do you mean to say that you knew after the compromise with Arps that Mr. Peters had given you authority, so far as the bank's interest was concerned in the assets in your hands, as attorney or trustee, to pay the proceeds of collections thereof over to Mr. Arps?

A. As I have stated before, an order of Mr. Peters to pay or turn over to Mr. Arps—I do not remember the phraseology—all collections were shown to me by Mr. Arps.

Q. 2. And you say in answer to your 14th cross-interrogatory that you had knowledge that Mr. Peters, the receiver, allowed Mr. Arps credit for these amounts; also that you paid them in to him Is that so?

A. It is true of some of the amounts. Didn't I make that reservation on the other? It is true of all except the last payment of $800.

Q. 3. Was it your understanding from the time Mr. Peters gave the order allowing the proceeds of collections to be paid over to Mr. Arps that Mr. Arps should receive credit on his own notes given in compromise at the same time that you applied those proceeds in reduction of the firm debt?

A. I supposed such credits would be allowed, inasmuch as Mr. Peters had by an order given up his right to these amounts to Mr. Arps, but that was a matter between Mr. Arps and Mr. Peters.

Recross-examination:

Q. 1. You spoke just now of having seen an order given by Mr. Peters to Mr. Arps directing the assets in your hands to *to* transferred or paid over to Mr. Arps. Did Mr. Arps ever give any
182 order upon you in favor of anybody else for those assets?

(Question objected to by counsel for the receiver on the ground of irrelevancy and the further express ground that this is not proper recross-examination.)

A. I have a notice from Col. U. Vaughan, of Murfreesboro', N. C., dated August 22nd, 1885, which is here produced, and the notary is requested to make and certify a copy.

(Marked Exhibit T.)

Further deponent saith not.

W. W. VICAR.

I, Kenton C. Murray, notary public, of the corporation of the city of Norfolk, State of Virginia, a commissioner duly substituted in this case by consent of parties to take the depositions of the said Wm. H. Peters, Geo. L. Arps, and W. W. Vicar, whose names are subscribed to the foregoing depositions respectively, do hereby certify that previous to the commencement of the examination of the said Peters and Arps and Vicar as witnesses in the suit between the said Wm. H. Peters, receiver, plaintiff, and the said R. W. Hyman, Jr., administrator, and others, defendants, they were duly sworn by me as such commissioner to testify the truth in relation to the matters in controversy between the said Wm. H. Peters, plaintiff, and the said R. W. Hyman, Jr., administrator, and others, defendants, so far as they should be interrogated concerning the same, and the said deposition was taken at the office of White & Garnett, Norfolk, Va., on the 12th and 13th days of Jan., A. D. 1888, as set forth, and that after said depositions were taken by me as aforesaid the interrogatories and answers thereto as written down were read over and the same signed by the said deponents, Wm. H. Peters, Geo.
183 L. Arps, and W. W. Vicar, before me *before me* as such commissioner at the place and on the day and year last aforesaid.

KENTON C. MURRAY,
Notary Public, Commissioner.

[NOTARIAL SEAL.]

$25,000. NORFOLK, VA., *June 24th*, 1884.

Twelve months after July 5, 1884, we promise to pay to the order of Geo. M. Bain, Jr., cashier, twenty-five thousand and no $\frac{}{100}$ dollars at the Exchange Nat'l bank, Norfolk, Va., value received.

39859½. *39859 1-2.*

July 8, '85. No. 4, due.

(Signed) R. W. HYMAN.
(") F. M. HYMAN.
(") GEO. L. ARPS.

Endorsed on face: Secured by real estate. Norfolk, Va., July 8, 1885. Protested for non-payment. H. C. Whitehead, notary public. Charges, 1.22, noting.

$25,000. NORFOLK, VA., *June 24th*, 1884.

Twelve months after July 5th, 1884, we promise to pay to the order of Geo. M. Bain, Jr., cashier, twenty-five thousand & no $\frac{}{100}$ dollars at the Exchange Nat'l bank, Norfolk, Va., value received.

39573½.

No. 1. Due July 8th.

R. W. HYMAN.
F. M. HYMAN.
GEO. L. ARPS.

Endorsed on face: Norfolk, Va., July 8th, 1885. Protested for non-payment. H. C. Whitehead, notary public. Charges, $1.22, noting.

184 (Exhibits A, B, C, and D.)

Examined by me, compared with the original, and hereby certified as true copies of the four notes to be filed with these depositions.

K. C. MURRAY, *Comm.*

$25,000. NORFOLK, VA., *June 24th*, 1884.

Twelve months after July 5th, 1884, we promise to pay to the order of Geo. M. Bain, Jr., cashier, twenty-five thousand dollars at the Exchange National bank, Norfolk, Va., value received.

39574½.

No. 2. July 8, due.

(Signed) R. W. HYMAN.
(") F. M. HYMAN.
(") GEO. L. ARPS.

Endorsed on face: Secured by real estate. Norfolk, Va., July 8th, 1885. Protested for non-payment. H. C. Whitehead, notary public. Charges, $1.22, noting.

$25,000. NORFOLK, VA., *June 24th*, 1884.

Twelve months after July 5th, 1884, we promise to pay to the order of Geo. M. Bain, Jr., cashier, twenty-five thousand dollars at the Exchange National bank, Norfolk, Va., value received.

39575½.

No. 3. July 8, due.

(Signed) R. W. HYMAN.
(Signed) F. M. HYMAN.
(Signed) GEO. L. ARPS.

Endorsed on face: Secured by real estate. Norfolk, Va., July 8th, 1885. Protested for non-payment. H. C. Whitehead, notary public. Charges, 1.22, noting.

185 Endorsed.

Paid M'ch 3, '85, $5,000.
July 2, '85, $5,619.08.
Jan. 2, '86, $4,000.
Sept. 10, '86, $2,000.
Jan. 4, '87, $1,550.
" " 450.
Jan. 4, '88, $3,300.

NEW YORK, *Octo.* 1, 1883.

Messrs. Jno. B. Whitehead, prest'd., and Geo. M. Bain, Jr., cashier, of the Exchange National bank, Norfolk, Virginia.

GENTLEMEN: As the executor of the estate of E. M. Robinson, I hold, with my co-ex'r, Abner H. Davis, title to 640 acres of land, being section 21, town of Cicero, Cook county, Illinois, under certain agreements made by and between Mr. Robinson during his lifetime and Mr. R. W. Hyman, and also between the executors and Mr. R. W. Hyman. Mr. Hyman is, upon a sale of said property, to receive one-half of the net profits, as provided in said agreements, arising from such sale. Mr. Hyman has requested me that whenever a sale is made of said property, after paying all taxes, liens, and assessments, to hold for account of your bank such sum, not exceeding one hundred thousand dollars, as the firm of Hymans & Dancy, Norfolk, Va., or Dancy, Hyman & Co., New York, may be owing to your bank at the time of realizing from such sale. This I hereby agree to do, with Mr. Hyman joining me in the same with his approval.

Very respectfully yours,

HENRY A. BARLING, *Executor.*

I approve the above.
R. W. HYMAN.

186 (Exhibit E.)

Examined by me, compared with the original, and hereby certified as a true copy thereof to be filed with these depositions.

K. C. MURRAY, *Comm.*

NEW YORK, *July 5th*, 1884.

Messrs. Jno. B. Whitehead, pres'd't, and Geo. M. Bain, Jr., cashier, of the Exchange National bank, Norfolk, Virginia.

GENTLEMEN: As the executor of the estate of E. M. Robinson, I hold, with my co-ex'r, Abner H. Davis, a title to six hundred and forty acres of land, being section 21, town of Cicero, Cook county, Illinois. Under certain agreements made by and between Mr. Robinson during his lifetime and Mr. R. W. Hyman, and also between the executor and Mr. R. W. Hyman, Mr. Hyman is, upon sale of said property, to receive one-half of the net profits, as provided in said agreements, arising from such sale.

Mr. Hyman has requested me that whenever a sale is made of said property, after paying all taxes, liens, and assessments, to hold for account of your bank such sum, not exceeding one hundred thousand dollars, as may be found to be due to him.

As Mr. R. W. Hyman, F. M. Hyman, and Geo. L. Arps, comprising the firms of Hymans & Dancy, Norfolk, Va., and Dancy, Hyman & Company, New York, *is* now about to be dissolved, but are still owing said bank by their four several and joint notes for twenty-five thousand dollars each, payable twelve (12) months after the 5th of July, 1884, without interest, this understanding is to apply to the renewal of any part of the whole of said notes from time to time as may be agreed upon.

This I hereby agree to, Mr. Hyman joining me in the 187 same with his approval.

Very respectfully yours,

(Signed) HENRY A. BARLING,
For Self & A. H. Davis, Ex'rs.

I hereby approve the same.
R. W. HYMAN.

(Exhibit F.)

Examined by me, compared with the original, and hereby certified as a true copy thereof to be filed with these depositions.

K. C. MURRAY, *Com'r.*

NEW YORK, *Mar. 1st*, 1886.

Wm. H. Peters, Esqr., receiver, Norfolk, Virginia.

DEAR SIR: I have your favor 26th ulto. Since writing you on the 25th ulto. I have received from Chicago the original agreement between Mr. R. W. Hyman and the late Mr. Edw'd Mott Robinson and also the one between Mr. H. and Mr. Robinson's executors, and I now hand you notarial copies of same.

The account with the property which was bought under these agreements is made up annually and the amount due the estate as p'r acc. rendered Mr. R. W. Hyman, adm'r, to Dec. 31, 1885, is $436,159.05. I enclose Edwin F. Coreys' bill, four dollars, for making copies, which kindly remit and oblige

Yours truly,

(Signed) HENRY A. BARLING, *Executor.*

(Exhibit G.)

Examined by me, compared with the original, and hereby certified as a true copy to be filed with these depos-tions.

K. C. MURRAY, *Com'r.*

188 Whereas, Robert W. Hyman has purchased the undivided half of section twenty-one (21) township thirty-nine (39) north range thirteen (13) east of the third principal meridian in Cook county, Illinois, for the joint account of himself and Edward Mott Robinson of the city of New York, for the sum of fifteen thousand ($15,000) dollars upon the terms of six thousand ($6,000) dollars cash down and the residue in two equal instalments of forty-five hundred dollars each, payable respectively at any time within twelve and eighteen months from the 26th day of April, 1864, according to the tenor of two certain notes of that date secured by deed of trust on said premises it being recited therein, and in said notes that said Hyman shall have the privilege of paying each of them at the Merchants' Savings Loan and Trust Co.'s bank in Chicago, at any time before maturity, and that interest shall cease ten days after such payment into bank, and whereas, the said Edward Mott Robinson, hath advanced to said Hyman the said sum of six thousand dollars for said cash payment, and doth take the title to said lands subject to said deferred payments, and to make the same by way of advance.

Now therefore, this agreement witnesseth and it is hereby mutually agreed by and between said Edward Mott Robinson and the said Robert W. Hyman as follows, to wit:

First. Said Hyman shall sell said premises within one year from the date hereof, unless otherwise agreed between the parties hereto and shall make no charge for buying, selling or attending to the payment of taxes on the premises.

Second. Said Robinson shall advance all such moneys as may be required to pay taxes and deferred payments on said lands before sale and conveyance, so far as may be necessary so to do.

189 Third. Upon the sale of said premises the proceeds shall be distributed as follows: (1st) Said Robinson shall be reimbursed all moneys advanced and to be advanced on said premises by him, with interest at the rate of seven per cent. per annum (2) The balance of the proceeds of such sale shall be equally divided between the respective parties hereto: (3) An account of sales and of proceeds shall be made and rendered by said Hyman to said Robinson within ten days after such sale is made if made by said Hyman.

Fourth. And the said Robert W. Hyman for himself, his heirs, executors, administrators and assigns doth covenant and agree hereby to and with the said Edward Mott Robinson his heirs and assigns, that whenever sale is made of said premises that he the said Robinson or his heirs or assigns shall in any event be reimbursed the full amount of all advances made and to be made on said lands, with interest thereon at the rate of seven per cent. per annum.

In witness whereof we, the said Edw'd Mott Robinson and the

said R. W. Hyman hereby bind ourselves, our heirs and assigns to the foregoing agreement and set our hands and seals.

New York, June 20th, 1864.

EDWARD MOTT ROBINSON.
R. W. HYMAN. [SEAL.]

[U. S. inter. rev. stamp, 5c., cancelled.]

Witness to both:
WILLIAM E. WATSON.

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

I, Edwin F. Corey, a notary public for the State of New York, duly commissioned and qualified and residing in the city and county of New York, hereby certify that I have compared
190 the foregoing copy of an original agreement with the said original, and that said copy is a true and correct copy of said original and the whole of the same.

Given under my hand and official seal this first day of March, A. D. 1886.

EDWIN F. COREY,
[SEAL.] *Notary Public*, 54 *Wall St., New York.*

Examined by me, compared with the original copy, and hereby certified as correct copy.

K. C. MURRAY, *Com'r.*

Whereas, Edward Mott Robinson (since deceased) and Robert W. Hyman who were parties to the agreement of which the foregoing is a copy did also agree that the remaining undivided half of section twenty-one (21) township thirty-nine (39) north range thirteen (13) east of the third principal meridian in Cook county Ill., should be purchased at the price of seventeen thousand and fifty ($17,050) dollars for their joint account and benefit in all respects, on the same terms as specified in the foregoing instrument, and whereas at the time such purchase was consum-ated, said Edward Mott Robinson had deceased, and the title for said additional purchased interest of one-half of said section was at the time, namely, about the 24th day of June, 1865, conveyed to the undersigned, Henry A. Barling and Abner H. Davis, executors of Edward Mott Robinson, by whom the purchase-money paid was advanced.

Now this memorandum witnesseth in pursuance of the agreement made between said Hyman and said Robinson in his lifetime that the said last purchased undivided half of said section is held by the said Henry A. Barling, and Abner H. Davis as executors as
191 aforesaid upon like terms and conditions, so far as respects the share and interest of said Hyman in the profit or loss to result from said purchase as the said undivided half first purchased was held by said Edward Mott Robinson under the said foregoing agreement of June 20th, 1864, and said Hyman agrees in like manner as he did in respect of the first purchase that the said executors

shall be reimbursed the amount of all advances they have made or shall make for or in respect of said last purchased half with interest thereon at the rate of seven per cent. per annum.

And it is further understood and agreed between the parties that in respect of both said parcels or undivided halves purchased as aforesaid the executors of or trustees under the last will and testament of Edward Mott Robinson have the right at any time or from time to time, in their discretion to sell the whole or any part or parts of said premises for such price as they may deem expedient and said Hyman shall be bound by the results of such sale.

It is further agreed in respect of both said purchases, that if, within one year from this date there shall not have been enough received from sales of said premises to reimburse said Robinson's estate for his and its advances with interest, the executors, in making up their eventual account for reimbursement of the estate for its advances and interest, shall be entitled to state the account of advances computed with interest up to the end of a year from this date, the whole principal and interest drawing interest from that time, and so from that time forth state the account with annual rests adding in the accrued interest, provided always that in case of a loss instead of a profit accruing on the purchase, such annual rests shall not be made but simple interest only for the whole
191½ time without rests shall be charged.

In witness whereof the said parties have hereunto set their hands and seals the 24th day of September, (1867), eighteen hundred and sixty-seven.

[Int. rev., 5 cts. Cancelled.]

(Signed) HENRY A. BARLING, *Ex.* [SEAL.]
(Signed) A. H. DAVIS, *Ex.* [SEAL.]
(Signed) ROB'T W. HYMAN. [SEAL.]

WILLIAM E. WATSON, *As to All.*

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

I, Edwin F. Corey, a notary public for the State of New York, duly commissioned and qualified, and residing in the city and county of New York, hereby certify that I have compared the foregoing copy of an original agreement with the said original, and that said copy is a true and correct copy of said original and the whole of the same.

Given under my hand and official seal this first day of March, A. D. 1886.

(Signed) EDWIN F. COREY,
Notary Public, 54 *Wall St., New York.*

Examined by me, compared with the copy, and hereby certified as a correct copy.

K. C. MURRAY, *Comm.*

192 *Statement of Claim of William H. Peters, Receiver of the Exchange National Bank of Norfolk, Virginia, Against the Estate of R. W. Hyman, Deceased.*

One note of R. W. Hyman, F. M. Hyman, and George L. Arps, dated June 24th, 1884, payable July 8th, 1885, for		$25,000
Subject to the following credits, to wit:		
By cash, M'ch 3d, 1885	$5,000	
" " July 2d, "	5,619 08	
" " Jan. 2d, 1886	4,000	
" " Sept. 10th, —	2,000	
" " Jan. 4th, 1887	2,000	
		18,619 08
		6,380 92
Interest to August 1st, 1887, on the above		1,321 29
One note of R. W. Hyman, F. M. Hyman, and George L. Arps, dated June 24th, 1884, payable July 8th, 1885, for		25,000 00
Interest to August 1st, 1887		3,095 83
One note of R. W. Hyman, F. M. Hyman, and George L. Arps, dated June 24th, 1884, payable July 8th, 1888, for		25,000 00
Interest to August 1st, 1887		3,095 83
One note of R. W. Hyman, F. M. Hyman, and George L. Arps, dated June 24th, 1884, payable July 8th, 1885, for		25,000 00
Interest to August 1st, 1887		3,095 83
		91,989 70
Int. on $1,380.92 from Aug. 1, '67, to Jan. 4th, 1888		2,088 72
		94,078 42
Cr. by cash, Jan. 4th, 1888		3,300 00
		$90,778 42

Exhibit H.

Examined by me, compared with the original, and hereby certified as a true copy to be filed with these depositions.

K. C. MURRAY, *Com'r.*

193 In the District Court of the United States for the Eastern District of Virginia.

To the Honorable Robert W. Hughes, judge of said court:

Your petitioner, Wm. H. Peters, as receiver of the Exchange National Bank of Norfolk, respectfully represents unto your honor—

That on the 10th day of April, 1885, said Exchange National Bank of Norfolk was put into liquidation and your petitioner was duly appointed the receiver thereof by the Comptroller of the Currency of the United States, under and in pursuance of the law of the United States; that on or about the date last aforesaid your petitioner accepted said office and entered upon the duties of the same; took possession of the books, records, and as-ets of every description of said bank, and from thence has been hitherto and still is engaged in the collection of all debts, dues, and claims belonging to said bank, and since then has been and still is discharging the duties of his said office.

That among the assets of said bank so coming into the hands of your petitioner as such receiver were four notes made by R. W. Hyman, F. M. Hyman, and Geo. L. Arps, dated July 5th, 1884, each for $25,000, payable to Geo. M. Bain, Jr., cashier, twelve months after their date; that payments have been made on account of said indebtedness evidenced by said notes, which have reduced the sum actually due thereon as of July (Exhibit J, examined by me, compared with the original, and hereby certified as a true copy thereof, to be filed with this deposition; 7 pages to this ex.
194 K. C. Murray, *d*omm.) 5th, 1885, to the sum of $89,380.92.

That the said indebtedness, although evidenced by the said notes of said R. W. Hyman, F. M. Hyman, and Geo. L. Arps individually, was nevertheless contracted by said persons trading under the firm name and style of Hymans & Dancy, Norfolk, Va., and Dancy, Hyman & Company, New York; that about or just before the time of making said notes the said persons, trading as aforesaid, became utterly insolvent, and since that period the said R. W. Hyman has departed this life, leaving no estate of which your petitioner is advised except that mentioned in the writing hereinafter referred to.

That your petitioner also found among the assets of said bank a paper-writing dated the 1st day of October, 1883, and signed by Henry A. Barling, executor, wherein it is provided that the interest of R. W. Hyman in certain lands near Chicago, Illinois, shall be held liable for the said notes. A copy of said writing is herewith filed as a part of this petition, marked Exhibit "A."

Your petitioner has made due and diligent inquiry into the affairs of the said debtors and has been informed and believes that they are hopelessly insolvent.

He has also been advised that the interest of the said R. W. Hyman in the Chicago lands is altogether speculative, with no opportunity just now of realizing anything whatever from it, even if the owner of the fee should see fit to sell the same.

That the said F. M. Hyman is now well advanced in years, is out of business without any present prospect of ever resuming.

That the remaining partner and debtor, Geo. L. Arps, has no resources from which to pay said indebtedness except his future labor, with such aid and assistance as his friends may lend him.

195 That the said Geo. L. Arps desires to be relieved from his

individual liability on said notes without affecting that of the other makers of said notes and has made the following offer, viz:

To execute and deliver to your petitioner his five notes as follows:

One for $4,000, payable Jan. 1st, 1886, endorsed by U. Vaughan.
One " $4,000, " " " 1887, " " U. Vaughan.
One " $3,300, " " " 1888, not endorsed.
One " $3,300, " " " 1889, " "
One " $3,276.18 " " " 1890, " "

All to bear interest at six per centum per annum, payable annually, the said bank to renounce all claims to a lot of doubtful claims due said firms and now in the hands of W. W. Vicar, but to retain its claim on the said Chicago lands and also its right to proceed against the other debtors for the balance due on said indebtedness; that your petitioner has been informed and believes that U. Vaughan, the gentleman offered as endorser on the first two of said notes, is a man of wealth and character.

That the said Arps, as a further guarantee of his good faith in the performance of said offer, agrees to execute to your petitioner his bond for the entire indebtedness, to wit, the sum of $89,380.92, with a power of attorney to confess judgment against him for that amount if he shall be thirty days in default in the payment of any one of said notes as the same shall become due and payable.

That he will also assign to your petitioner, as additional security for the payment of said compromise, his life insurance policies for $8,000 and keep the premium thereon duly paid up; that the above offer has been submitted to the Comptroller of the Cur-
196 rency of the United States and has been approved by him, subject to your honor's sanction.

That it is the opinion of your petitioner that it is for the best interest of the creditors of said bank that such offer be accepted.

He has been advised and believes that a judgment against all of said debtors would be utterly unavailing. Your petitioner therefore prays that your honors will enter an order authorizing and directing him to accept of and receive from the said Geo. L. Arps the said notes and security therewith, and in consideration thereof to release and discharge the said Arps from his individual liability as one of the makers of the said four notes, dated June 23rd, 1884, and payable twelve months after July 5th, 1884, but such release not to operate a- release or affect the liability of the other makers of said notes.

And that your honor will grant unto him such other and further power as shall be necessary in the premises.

And your petitioner will ever pray, &c.

(Signed) WM. H. PETERS, *Receiver.*

STATE OF VIRGINIA, *City of Norfolk,* } *To wit:*

Wm. H. Peters, being first duly sworn, says that he read the above petition by him subscribed as receiver and knows the con-

tents thereof, and that the same is true in substance and in fact, as he verily believes.

Subscribed and sworn to before me this 31st day of July, 1885.

(Signed) WILLIAM H. WHITE,
Notary Public.

197 NORFOLK, VA., *July 15th*, 1885.

W. H. Peters, Esq., receiver of the Exchange National bank.

DEAR SIR: I am indebted to the Exchange National Bank of Norfolk, jointly with R. W. Hyman and F. M. Hyman, who, with myself, composed the late firms of Hymans & Dancy, of Norfolk, and Dancy, Hyman & Company, of New York, in the sum of eighty-nine thousand three hundred and eighty dollars and ninety-two cts.

When this debt was made it was supposed that the interest of R. W. Hyman in certain property near the city of Chicago made the debt a good one. He has, however, since died, leaving no estate whatever except the interest above referred to, which is of doubtful and uncertain value. The other partner, F. M. Hyman, is well advanced in years, is without property or means whatever, and is wholly unable to pay anything. I, the junior partner, am also wholly unable to discharge this debt or any considerable part of it.

I have no expectations or prospects of acquiring money from any source except as I may be able to earn it, and this I cannot hope to do with this large debt hanging over me. By the assistance of friends I am able to make you the following offer of compromise, being twenty per cent. of the amount due the bank, my notes for—

$4,000, payable Jan. 1st, 1886, and endorsed by U. Vaughan;
$4,000, payable Jan. 1st, 1887, and endorsed by U. Vaughan;
$3,300, payable Jan. 1st, 1888, not endorsed;
$3,300, payable Jan. 1st, 1889, not endorsed;
$3,276.18, payable Jan. 1st, 1890, not endorsed;

198 $17,876.18—all to bear interest at six per cent. per annum, payable annually, the bank to surrender its interest in some uncollected accounts and claims of the within-named firms, but to retain the collateral it holds in the interest of R. W. Hyman's land, and also to hold the notes for the entire amount due until the whole of the compromise settlement shall be paid.

I also agree to execute to the bank my bond for the entire debt, with the power of attorney attached to take a judgment on the same in the event of my default in the payment of any one of the installments provided for in my proposition. I will also assign to you life insurance policies as collateral for the unendorsed notes and pay the premium upon them for at least eight thousand dollars, premiums to be paid as they become due by me.

I am yours very truly,

(Signed) GEO. L. ARPS.

In the Circuit Court of the United States for the Eastern District of Virginia.

Upon reading and filing the petition of Wm. H. Peters, the receiver of the Exchange National Bank of Norfolk, in the matter of

the offer of George L. Arps to settle his individual liability as joint maker with R. W. Hyman and F. M. Hyman of four notes, each for the sum of twenty-five thousand ($25,000) dollars, dated June 23rd, 1884, and payable twelve months after July 5th, 1884, to the order of Geo. M. Bain, Jr., cashier, by delivering to said receiver his five notes as follows:

One note for $4,000, payable January 1st, 1886, and en-
199 dorsed by U. Vaughan; one note for $4,000, payable January 1st, 1887, and endorsed by U. Vaughan; one note for $3,300, payable January 1st, 1888, not endorsed; one note for 3,300, payable January 1st, 1889, not endorsed, and one note for $3,276.18, payable January 1st, 1890, not endorsed, all to bear interest from their date and secured, as set out in said petition—

The court, being fully advised in the premises, doth hereby order, direct, and authorize Wm. H. Peters as such receiver to accept of and from the said Geo. L. Arps the said notes above enumerated and secured, as set out in said petition, and in consideration thereof to release the said Geo. L. Arps from his individual liability as a maker of the said four notes, dated June 23rd, 1884, and payable as aforesaid, but such release shall not operate to discharge either of the other makers of said notes, and such other authority and power is hereby given to said receiver as is necessary to carry out the compromise in said petition set forth.

Norfolk, Aug. 1st, 1885.

(Signed) RO. W. HUGHES, *Judge.*

200 R. W. Hyman, F. M. Hyman, & Geo. L. Arps.

1884.				1885.		
June 24.	R. W. H.,	F. M. H,	& G. L. A.	—July 8, note	25,000	
	"	"	"	Paid M'ch 3, 1885	5,000	
					20,000	
	"	"	"	Paid July 2, 1885	5,619	08
					14,380	92
	"	"	"	Int. to Jan. 2, '86	417	06
					14,797	98
	"	"	"	Paid Jan. 2, 1886	4,000	
					10,797	98
	"	"	"	Int. to Sep. 10, '86	446	31
					11,244	29
	"	"	"	Paid Sep. 10, '86	2,000	
					9,244	29
	"	"	"	Int. to Jan. 4, '87	175	64
					9,419	93
	"	"	"	Paid Jan. 4, 1887	2,000	
					7,419	93
	"	"	"	July 8, note	25,000	
June 24.	"	"	"	July 8, int. to Jan. 1, '87	2,216	66
	"	"	"	" note	25,000	
	"	"	"	Int. to Jan. 1, '87	2,216	66
	"	"	"	Note	25,000	
	"	"	"	Int. to Jan. 1, '87	2,216	66
					89,069	91

201 $3,300. NORFOLK, VA., *August 1st*, 1885.

On the first day of January, 1889, after date, I promise to pay to the order of Wm. H. Peters, receiver of the Exchange National Bank of Norfolk, Va., thirty-three hundred dollars, with interest from date at 6% per annum, value received.

GEO. L. ARPS.

$3,276.18. NORFOLK, VA., *August 1st*, 1885.

On the first day of January, 1890, after date, I promise to pay to the order of Wm. H. Peters, receiver of the Exchange Nat'l Bank of Norfolk, Va., thirty-two hundred and seventy-six $\frac{18}{100}$ dollars, with interest from date at 6% per annum, value received.

GEO. L. ARPS.

(Exhibit L.)

Examined by me, compared with the original, and hereby certified as a true copy to be filed with these depositions.

K. C. MURRAY, *Comm.*

$89,380.92. NORFOLK, VA., *August 1st*, 1885.

Whereas George L. Arps, as a member of the late firms of Hymans & Dancy, of Norfolk, Va., and Dancy, Hyman & Co., of New York, is indebted to Wm. H. Peters, as receiver of the Exchange National Bank of Norfolk, in the sum of eighty-nine thousand three hundred and eighty $\frac{92}{100}$ dollars, and in settlement by compromise of the said debt has been allowed by an order of the circuit court of the United States for the eastern district of Virginia, entered
202 on the 1st day of August, 1885, on the petition of Wm. H. Peters, receiver as aforesaid, to execute and deliver to said receiver the following notes, to wit:

One note for $4,000, payable Jan. 1st, 1886, endorsed by U. Vaughan.
One note for 4,000, " Jan. 1st, 1887, " " " Vaughan.
One note for 3,300, " Jan. 1st, 1888, not endorsed.
One note for 3,300, " Jan. 1st, 1889, " "
One note for 3,276.18, " Jan. 1st, 1890, " "

all bearing interest at six per cent. per annum, payable annually, and, among other things required by said order of court, the said Geo. L. Arps has covenanted to execute to the said receiver his bond for the entire indebtedness above mentioned, to wit, the said sum of $89,380.92, with a power of attorney to confess judgment thereon against him for that amount if he shall be thirty days in default in the payment of any one of said notes as the same shall become due and payable:

Now, therefore, in pursuance of the said order of court and in fulfillment of the said covenant, I, George L. Arps, of the city of Norfolk, hereby promise and bind myself, my heirs, executors, and assigns, to pay on demand to William H. Peters, receiver of the Exchange National bank, or his successor in office the just and full sum of eighty-nine thousand three hundred and eighty $\frac{92}{100}$

dollars, with interest thereon from the 5th day of July, 1885, at the rate of six per centum per annum till paid.

And I do hereby waive the benefit of my homestead exemption as to this debt and obligation, and in case of my default for the period of thirty days in the payment of any one of the notes herein-
203 before mentioned, given by me to the said receiver as aforesaid, I hereby authorize and appoint Theodore S. Garnett my -reue and lawful attorney-in-fact, for me and in my name to appear in the clerk's office of the corporation court or circuit court of the city of Norfolk, in the State of Virginia, or in the said courts or either of them during any term thereof in an action of debt to be brought against me at the suit of the said Wm. H. Peters, receiver as aforesaid, or his assigns, on this bond at any time after such default as aforesaid, and confess judgment thereon against me for the sum of eighty-nine thousand three hundred and eighty $\frac{92}{100}$ dolls., with interest thereon from the 5th day of July, 1885, till paid, and the costs of suit.

And I do hereby release all manner of error in the entering of said judgment or any process of proceeding therein.

Witness my hand and seal this first day of August, 1885.

(Signed) GEO. L. ARPS. [SEAL.]

CORPORATION OF THE CITY OF NORFOLK, *To wit:*

I, William H. White, a notary public for the corporation aforesaid, in the State of Virginia, do certify that George L. Arps, whose name is signed to the writing above, bearing date on the first day of August, in the year eighteen hundred and eighty-five, has acknowledged the same before me in my corporation aforesaid.

Given under my hand this 18th day of August, in the year 1885.

(Signed) WM. H. WHITE,
Notary Public.

(Exhibit M.)

Examined by me, compared with the original, and hereby certify as a true copy to be filed with these depositions.

K. C. MURRAY, *Comm.*

204 *Collateral Notes of George L. Arps.*

Life insurance	policy	No.	35142	3,000
"	"	"	218,742	3,000
"	"	"	302,846	2,000

All the above policies in the Equitable Life Insurance Society of the U. S., No. 120 Broadway, N. Y.

(Exhibit N.)

Examined by me and compared with the original, and hereby certified as a true copy thereof to be filed with these depositions.

K. C. MURRAY, *Comm.*

NORFOLK, *Aug.* 17*th*, 1885.

To W. W. Vicar, Esq., attorney and trustee for Hymans & Dancy and Dancy, Hymans & Company, Norfolk, Va.

SIR: You are hereby authorized to turn over to George L. Arps, Esq., the proceeds of collections made by you from the uncollected accounts and claims (the assets of Hymans & Dancy and Dancy, Hyman & Company) now in your hands for collection for the bank.

Respectfully,

(Signed) WM. H. PETERS,
Receiver Ex. Nat'l Bank of Norfolk.

Endorsed as follows:

W. W. Vicar, attorney and trustee, will pay to U. Vaughan the proceeds of the within order as collected, for value received.

(Signed) GEO. L. ARPS.

August 1st, 1885.

I paid W. H. Peters interest on my notes as follows:
One note for $4,000, due Jan. 4th, 1886, $100.
One note for $4,000, due Jan. 4th, 1887, $340.
One note for $3,300, due Jan. 4th, 1888, $478.50.

205 I cannot very well find the notes I have paid. I hope this information will be what is required.

(Signed) GEO. L. ARPS.

(Exhibits O and P.)

Examined by me, compared with the original, and hereby certified as a true copy thereof to be filed with this deposition.

K. C. MURRAY, *Comm.*

We, R. W. Hyman, F. M. Hyman, and Geo. L. Arps, constituting the firms of Dancy, Hyman & Co., New York, N. Y., and Hymans & Dancy, Norfolk, Va., hereby constitute and appoint W. W. Vicar, Norfolk, Va., our true and lawful attorney, with full power and authority to convert into money all properties belonging *belonging* to the said firms and to collect and receipt for all claims, demands, and balances due to the said firms, whether book accounts, open accounts, notes, bills receivable or otherwise, except the premium guano or fertilizer transactions for the present season, which have been assigned him by a special paper for a special purpose, and apply the same, after taking out all expenses attending said collections, to the liquidation of any debt or debts by the said firms not already provided for, including salaries to our employés, rents due or to become due, not exceeding in the aggregate the sum of two thousand dollars, and then pay the balance of funds over to the Exchange National Bank of Norfolk, Va., for our account. We hereby authorize the said W. W. Vicar to compromise any claims due to the said firms when to his judgment it is best to do so. We also authorize him to use the name of the said firms in settlement

of any and all matters hereby entrusted to him, and we
206 hereby ratify all his lawful acts done in pursuance of this power.

In testimony whereof we have hereunto set our hands and seals this 7th day of July, 1884.

(The words "after taking out all expenses attending said collections" interlined before signing; also the words "Bank of Norfolk, Va.")

(Signed) R. W. HYMAN. [SEAL.]
F. M. HYMAN. [SEAL.]
GEO. L. ARPS. [SEAL.]

Witness:
(Signed) H. L. WATTS.

(Exhibit Q.)

Examined by me, compared with the original, and hereby certified as a true copy to be filed with these depositions.

K. C. MURRAY, *Comm.*

Receiver's office, the Exchange National Bank of Norfolk, Va.

JAN. 4TH, 1887.

I have this day credited on note of $25,000, due July 8th, '85, of R. W. Hyman, F. M. Hyman, & Geo. L. Arps fifteen hundred and fifty dollars ($1,550), paid by W. W. Vicar, attorney & trustee.

($1,550.) (Signed) WM. H. PETERS, *Receiver.*

The Exchange National Bank of Norfolk, Va.

JANUARY 4TH, 1888.

Received of W. W. Vicar, trustee, &c., eight hundred dollars, to be credited on the note of R. W. Hyman, F. M. Hyman, & Geo. L. Arps for $25,000, due July 8th, 1885.

(Signed) WM. H. PETERS, *Receiver.*

(Exhibit R, five receipts.)

Examined by me, compared with the original, and hereby
207 certified to be a true copy to be filed with these depositions.

K. C. MURRAY, *Comm.*

The Exchange National Bank of Norfolk, Va.

JULY 2, 1885.

Received of W. W. Vicar, trustee & att'y-in-fact for Hymans & Dancy, his check against credit balance on books of this bank for fifty-six hundred & nineteen $\frac{8}{100}$ dollars, being part pay on joint note of R. W. & F. M. Hyman & Geo. L. Arps for $25,000, due July 8, 1885.

(Signed) WM. H. PETERS, *Receiver.*

W. W. Vicar, trustee, check 3,647 52
W. W. Vicar, att'y-in-fact, check 1,971 56

$5,619 08

Receiver's office, the Exchange National Bank of Norfolk, Va.

JAN. 2, 1886.

I have this day credited on note of $25,000, due July 8, '85, of R. W. Hyman, F. M. Hyman, & Geo. L. Arps four thousand dollars ($4,000), paid by W. W. Vicar, attorney & trustee.

$4,000. (Signed) WM. H. PETERS, *Receiver.*

Receiver's office, the Exchange National Bank of Norfolk, Va.

SEPT. 10TH, 1886.

I have this day credited on note of $25,000, due July 8th, '85, of R. W. Hyman, F. M. Hyman, & Geo. L. Arps two thousand dollars ($2,000), paid by W. W. Vicar, attorney & trustee.

$2,000. (Signed) WM. H. PETERS, *Receiver.*

208 MURFREESBORO', N. C., *Aug.* 22, 1885.

To W. W. Vicar, Esqr., Norfolk, Virginia, attorney and trustee for Messrs. Hymans & Dancy and Dancy, Hyman & Co., of Norfolk, Virginia.

SIR: You are hereby notified that I hold an order on you, drawn by Wm. H. Peters, Esq., receiver of the Exchange National Bank of Norfolk, Va., for the proceeds of collections made by you from the uncollected accounts and claims, the assets of Hymans & Dancy and Dancy, Hyman & Co., now in your hands for collection for said bank. This order was made to Geo. L. Arps, Esq., and by him transferred to me.

When funds in hand, notify me of the fact.

Respectfully,

(Signed) URIAH VAUGHAN.

(Exhibit S.)

Examined by me, compared with the original, and hereby certified as a true copy to be filed with these depositions.

K. C. MURRAY.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Circuit Court of Cook County.

WILLIAM H. PETERS, Receiver, &c., }
vs.
R. W. HYMAN, Adm'r, &c., *et al.* }

It is hereby stipulated by and between the parties hereto, by their respective counsel, that the above and foregoing testimony and the

several exhibits thereto attached may be read in evidence by
209 either party so desiring in a certain cause now pending in the probate court of said county, wherein said complainant is the plaintiff and R. W. Hyman, administrator, is defendant, with the same force and effect as if such testimony had been taken under commission properly issued out of said probate court and returned thereto properly executed.

T. S. GARNETT,
Attorney for Wm. H. Peters, Receiver, &c.
HAMMONSON & HEATH AND
PADDOCK, ALDIS & WRIGHT,
Attorneys for R. W. Hyman, Jr., Adm'r of the Estate of R. W. Hyman, Dec'd.

210 Copy.

WILLIAM H. PETERS, Receiver,
vs.
ROBERT W. HYMAN *et al.*

Deposition of Henry A. Barling and Exhibits.

In the Circuit Court of Cook County.

WM. H. PETERS, Receiver,
vs.
R. W. HYMAN *et al.*
In Chancery.

STATE OF ILLINOIS, *Cook County,* } *ss.:*

Be it remembered that on this 20th day of February, A. D. 1888, personally appeared before me, R. Wilson More, a notary public in and for the county and State aforesaid, pursuant to the notice hereto annexed, Henry A. Barling, to testify on the part of the defendant in the above-entitled cause.

And the said HENRY A. BARLING, having been duly sworn to testify the truth, the whole truth, and nothing but the truth in the case aforesaid, did depose and say as follows, to wit:

Direct examination by Mr. PADDOCK:

Q. Please state your full name, Mr. Barling.
A. Henry A. Barling.
Q. You reside in or near New York?
211 A. I reside at Highwood, New Jersey.
Q. Near New York?
A. Near New York.
Q. Your business is in New York?
A. Yes, sir.
Q. How long have you been in business in New York?
A. About 32 years.

Q. You are one of the executors of Edward Mott Robinson, deceased?

A. Yes, sir.

Q. Did you know him in his lifetime?

A. Yes, sir; I was with him from the time he came to New York in 1861 until the time of his death; I had his power of attorney for a year and a half during that time.

Q. Have you been acting as an executor and trustee under his will?

A. Yes, sir.

Q. For how long a time?

A. Since 1865.

Q. Mr. Robinson is dead, I believe?

A. Yes, sir.

Q. He died in 1865?

A. He died June 14th, 1865.

Q. Do you know the complainant, Mr. Peters, the receiver of the Exchange National Bank of Norfolk?

A. No, sir; I have never met him.

Q. You know generally of such a bank as that?

A. Yes.

Q. Have you the custody of Mr. Robinson's will?

A. Yes.

Q. The original will itself?

A. Yes, sir.

Q. That is the course of business in New York State, is it, for the executors to have the original?

A. I presume so; we have had it since the will was admitted to probate, with an endorsement of the surrogate upon it.

Q. Of its probate?

A. Of its probate.

Q. I will show you this paper and ask you to state what that is (handing paper to witness).

A. That is a copy of the will.

Q. By whom made?

A. By me, with the surrogate's certificate annexed to it.

212 Q. It is a copy of the will itself?

A. A copy of the will itself; yes, sir.

Copy of will above referred to offered in evidence by counsel for defendants and marked "Defendants' Exhibit I."

Q. Who has been the active executor, Mr. Barling, under that will?

A. I have.

Q. You knew Mr. Abner H. Davis, of course?

A. Yes, sir.

Q. Is he still living?

A. He is dead.

Q. Where did he reside?

A. At New Bedford a part of the time and a part of the time in New York.

Q. Do you consider yourself the active executor?
A. I do.
Q. Who, if any one, are acting now as trustees under that will? The acting trustee?
A. Edward H. Green, Edward D. Mandell, and myself.
Q. In what way was Mr. Green made a trustee?
A. Mr. Davis, in 1877, was very sick, and he resigned, and Mr. Green was appointed to take his place by the court.
Q. Was that about 1877 or 1878?
A. About 1878 or '79.
Q. Has he ever since acted as one of the three trustees?
A. He has.
Q. Did you know Robert W. Hyman in his lifetime?
A. I did.
Q. How long had you known him before he died?
A. Since 1861.
Q. Was he living in Illinois when you first became acquainted with him in 1861?
A. No, sir; he was living in New York.
Q. Do you recollect when he came to Illinois—about what time?
A. 1863 or '64.
Q. After he came to Illinois in 1863 and '64, did he continue to remain here constantly?
A. Only part of the time.
Q. In what way?
213 A. About half the time in New York and half the time here.
Q. Do you know what business, if any, he carried on here?
A. Well, he was connected with his nephew after he formed the firm of R. W. Hyman, Jr., & Company, and he was looking after real estate—had real estate other than this section 21.
Q. What they call a real-estate office?
A. Yes, sir.
Q. By his nephew you mean Robert W. Hyman, Jr.?
A. Yes.
Q. One of the defendants in this case?
A. Yes, sir.
Q. He is the administrator of his uncle's estate, is he not—acting as such?
A. I believe so, sir.
Q. Where does Mr. Mandell reside?
A. In New Bedford, Mass.
Q. Where does Mr. Edward H. Green reside?
A. At Englewood, New Jersey.
Q. The bill in this case refers to a contract entered into between Edward Mott Robinson and Robert W. Hyman on or about June 20th, 1864. Did you ever know of that contract?
A. Yes.
Q. Were you in New York at that time?
A. Yes.

Q. Where was Robert W. Hyman living at that time? Had he come to Chicago?

A. Yes; he had been in Chicago and come to New York after that, having bought the land.

Q. You recollect the occurrence of that purchase by him?

A. Very well.

Q. First of the one undivided half and then of the other?

A. Yes.

Q. I see the first paper is witnessed by William E. Watson. Who was Mr. Watson?

A. He was book-keeper for Mr. Robinson. He is dead. He died about 4 years ago or 5 years ago. It seems as if they were all dying off now.

Q. Do you recollect the subsequent contract?

A. Yes, sir.

Q. That purports to be made on the 24th day of September, 1867?

A. It was bought before that time, sir; the contract was
214 not entered into until after that time; it was bought in 1865. You will find on the memorandum which I gave you this morning how it was paid for.

Q. I am now speaking, however——

A. (Interrupting.) Of the contract?

Q. The contract between the executors and Mr. Hyman.

A. Yes; it was not drawn until in 1867.

Q. You signed that contract as one of the executors, I believe?

A. Yes, sir.

Q. Have there been advances of money under these contracts? If so, state generally to what extent.

A. All the money ever paid for the land has been paid by the executors of Mr. Robinson or Mr. Robinson himself.

Q. How is it as to taxes?

A. All paid by the executors.

Q. How as to the other expenses of managing the enterprise?

A. All paid by the executors or Mr. Robinson.

Q. Has that land ever been sold, Mr. Barling?

A. I think it -as sold at one time, but the party backed out.

Q. Never conveyed?

A. Never.

Q. So that the matter of the legal title stands as it then stood?

A. Exactly.

Q. Who is in possession of that land now?

A. The trustees of Edward Mott Robinson.

Q. Meaning yourself, Mr. Mandell, and Mr. Green?

A. Yes, sir.

Q. What use is the land put to? Got a tenant out there?

A. Two tenants. They use it for raising grass on it.

Q. I suppose it is not valuable as farming property, however?

A. No, sir.

Q. Did you come to Chicago or did you remain in Chicago and

give your personal attention to the sale of this land, or how was that managed?

A. I have been in Chicago time and time again for the last 23 years. I never meddled with the sale of this land; it was
215 in the hands of Mr. Hyman; it was advancing all the time and we held onto it.

Q. What was the course of business with regard to the method of paying these expenses and keeping the accounts under these contracts?

A. Mr. Hyman paid the expenses that might have been incurred here and drew upon New York for them, and we paid his drafts for taxes and other things.

Gen. SMITH:

(Q.) You mean the elder Hyman?

A. The elder Hyman, the uncle, Mr. Robert W. Hyman, Jr.

Mr. PADDOCK: That was the course of business from the office of Mr. Robert W. Hyman, Sr., until after he died, and after that the same course was continued in the office of Robert W. Hyman, Jr.?

A. Yes; in paying the taxes and other incidental expenses.

Q. Well, as to the management of the estate, controlling the tenants and selecting tenants, and with regard to improvements, was all that under Mr. Hyman's supervision—immediate supervision?

A. The whole of it.

Q. Then, as I understand you, Mr. Hyman, during his lifetime, had the supervision and knowledge of everything that was going on with regard to the management and expenses on that land?

A. Yes, sir.

Q. Did you, in the course of that business, render to him accounts from time to time; and, if so, how?

A. On the first of the year or on the 31st of December we made out and sent to him a statement of how the account stood on our books, bringing the balance down, and so on from year to year.

Q. Is that the course continued to the present time?

A. It is.

Q. The difference being that since Robert W. Hyman's death the accounts have been rendered to the nephew?

A. Yes, sir; always so.

216 Q. Are those the accounts to which you refer in your answer in this case as having been rendered?

A. Yes, sir.

Q. In rendering these accounts what was your course of dealing or your rule with regard to interest?

A. We computed the interest at 7 % on the debit items and credited 7 % on the receipts, charging the balance of interest, as the case might be, to the principal sum at 7 %.

Q. Was it a part of your course of dealing to carry the balance of the previous year as the starting item for the account——

A. Yes, sir.

Q. For the subsequent year?

A. For the subsequent year.

Q. So that it was a continuous account?

A. Yes; an annual account.

Q. Not a separate account for each year?

A. Oh, no; not at all.

Q. I will ask you whether those accounts were stated at those periods between yourself and R. W. Hyman, Sr.

A. He acknowledged receipt of them and made no objection to the account.

Q. And it went on the basis year after year as you state?

A. Until he died; yes, sir.

Q. Will you look at the papers I show you, Mr. Barling, and state on the basis of those accountings how much there was due on the account on the 31st day of December, 1883?

A. The balance due at that time was $356,498.65.

Q. And on December 31st, 1884?

A. On the 31st of December, 1884, there was due $385,818.44.

Q. On the 31st of December, 1885?

A. On the 31st of December, 1885, there was due $436,159.05.

Q. On the 31st of December, 1886?

A. On the 31st of December, 1886, there was due $469,131.30.

217 Q. On the 31st of December, 1887?

A. On the 31st of December, 1887, there was due $505,414.06.

Q. I observe, Mr. Barling, that some of these statements are originals in the sense of having been sent from your office and received by Mr. Hyman, and others seem to be copies; have you a general recollection of the matter or a recollection of the matter independent of those copies so you can state that the figures you have named are substantially correct?

A. The copies are sent from our statement book. Any copy of those accounts are made from the statement book, and I can verify those figures.

Q. From your knowledge of the business itself?

A. Yes, sir; I do not know why they are copies or why they should not be originals.

Q. The reason of that is that we were not able to find them here in Mr. Hyman's office, so we called upon you for the copies from your books.

A. Yes, sir.

Q. The question I am asking is whether you can state from your knowledge whether the figures you have given are correct.

A. I do so state.

Statement of account above referred to offered in evidence by counsel for defendants and marked Defendants' Exhibits Numbered 2 to 6 respectively, inclusive.

Q. I wish to ask you about another matter now, Mr. Barling, and that is whether the subject was discussed or settled between yourself and Mr. Hyman as to the plan or basis on which this land should be held. Please state whether you had any interviews and conversations with Robert W. Hyman on that subject; and, if so, give what was said on that occasion or those occasions.

Objected to by counsel for plaintiff on the ground that the
218 question is incompetent because the agreement speaks for itself; also because Mr. Barling, being a party to this suit, has asked as to a conversation with Mr. Hyman, who is dead.

A. A great many at various times, and his idea was to hold the land at $2,000 or $3,000 an acre—a little above the mark, you know; and he fought against ever selling at all, and if a price was named he would want from $100 to $200 or $300 more.

Q. Were those conversations subsequent to the contracts or before?

A. Decidedly subsequent.

Q. Where did they occur?

A. Sometimes in New York, more frequently in Chicago. I recollect we rode out there once, and the Chicago & Northwestern had bought a lot of land a half mile or three-quarters of a mile east, I think, for $3,000 an acre, and he was sure we would get $4,000 for this.

Q. In what way were the suggestions received by yourself and the other executors? What was said in response to those suggestions?

A. Well, I took it for granted that he knew more about the land than the other executors and myself, and I listened to it. I did not pay any attention. We did not want the money and would have to let it lay.

Q. Mr. Barling, I will show you this paper, bearing date "Richfield Springs, August 7th, 1871," and ask you to state what that is (handing paper to witness); do you recognize the handwriting?

A. Yes.

Q. Whose is it?

A. Robert W. Hyman's.

Q. Senior?

A. Yes, sir.

Q. Did you ever receive it from him my mail?

A. I received it by mail, or Barling & Davis, of 46 South street, New York, received it.

Q. You, of course, knew Mr. Hyman's handwriting very well?

A. I do so, very well.

219 Q. I will show you another paper, dated August 7th, 1882, Chicago, and ask you to state what that is (handing paper to witness).

A. A letter from Robert W. Hyman.

Q. Did you receive that from him by mail?

A. I did.

Q. I will show you another paper, dated Chicago, August 17th, 1872, and ask you if that is the letter from R. W. Hymans, Sr., received by you from the mail.

A. It is.

Q. Here is a paper dated Chicago, May 2nd, 1873, addressed to Mess. Barling & Davis. State what that is (handing paper to witness).

A. A letter from Robert W. Hyman.
Q. Received by you or your firm?
A. Yes, sir.
Q. Were you and Mr. Davis in business together at that time?
A. We were, sir.
Q. What is this paper dated March 4th, 1882?
A. From Robert W. Hyman.
Q. That is a letter from Mr. Hyman to yourself?
A. Yes, sir.
Q. Mr. Hyman, Sr.
A. Yes, sir.

Papers last above referred to offered in evidence by counsel for defendants and marked Defendants' Exhibits 7 to 11, inclusive.

Q. You have read the bill in this case or seen a copy of it, have you not, Mr. Barling?
A. Yes, sir.
Q. You will remember there is mention made in the bill of a letter from yourself, followed by another letter from yourself to the officers of the bank?
A. Yes, sir.
Q. Will you state the time and the circumstances under which you issued those two letters?
A. I think in July; I think the first one is dated July.
220 Q. I can give you the date of them. One is dated October 1st, 1883, and the other July 5th, 1884.
A. Yes; Mr. Hyman called and said he brought a form of letter, stating that his firm wanted to get accommodations at the bank, and I would please write that letter to hold $100,000 of the proceeds of this section 21 when sold, and after consideration I copied the letter and gave it to him. Then, in July, Mr. Whitehead sent us another letter, stating that it was but the duplicate of the one previously, in October, and to please send that. It was the same sense, with the exception of the four notes of $25,000 each which are named in it, and I copied that and signed it.
Q. Have you Mr. Whitehead's letter?
A. I have it in New York. It was stated that it was a duplicate of the other, and there is no claim for the $200,000.
Q. For the same debt?
A. Yes; it was done to preserve the record; that is all.
Q. Did you have any further communication concerning the drawing of those letters than what you have mentioned from Mr. Hyman's personal interview and Mr. Whitehead's letter?
A. That is all of it, sir, with the exception that I have corresponded with Mr. Peters in reference to the matter.
Q. I speak with reference to the drawing of the letter.
A. None at all, sir; nothing at all.
Q. Since Mr. Hyman's death was the Peters interview?
A. I had no interview with him; I had a letter from him.
Q. When was that?
A. I think probably a year ago; a friend of his called upon me

who was authorized to bring the matter up, aand then I wrote Mr. Peters.

Q. Was that the first intervention or appearance of the officers of the bank that you recollect, under the papers, or had they corresponded before that?

221 A. We corresponded with him in reference to the settlement of this Chew matter. Do you recollect there was a claim of Chew, and we offered to compromise that for $20,000? Our counsel, Messrs. Evarts, Choate & Beaman, advised that we get the assent of the bank to make that compromise and pay $20,000.

Q. That is one of the items mentioned in one of these statements?

A. Which they gave. They gave their consent to a settlement of that claim and making a charge against the estate.

Q. You mean Mr. Peters assented?

A. Mr. Peters assented as receiver of the bank.

Q. Did the bank, and, if so, for the first time, ever call upon the trustees to make any sale of this property? Do you recollect any demand upon the part of the bank to sell?

A. No; they did not make a demand in writing. Mr. Buckley called and said he was authorized by Mr. Peters to settle it and have the property sold or to sell the claim, and offered to sell it for $50,000.

Q. Who is Mr. Buckley?

A. Mr. Buckly claimed to represent the bank.

Q. Was he an attorney of New York?

A. I think not, sir; I think he was an expert accountant—examining accounts—a very clever man. He claimed and represented he was authorized by Mr. Peters to make this offer, and I tried to settle it there, but it could not be settled, and hence this suit.

Q. Have the trustees been acting under the advice of counsel in New York?

A. All the time, sir, Evarts, Choate & Beaman have been our advisers.

Q. Did Mr. Buckley present any letters from the bank officers on this occasion?

A. I think not, sir; I knew Mr. Buckley, and his assertion was received as being true.

Q. You took it for granted that he was representing Mr.

222 Peters' interests in the matter?

A. Yes; and he called on me in New York with the attorney for the bank, Mr. Garnett.

Q. What part, if any, Mr. Barling, has Mr. Mandell taken in these transactions of which you have been speaking?

A. None at all, sir, except from time to time to consult with him; no active part.

Q. Will you, when you return to New York, be good enough to send on that letter from Mr. Whitehead to be attached to your deposition; can you do that?

A. The letter stating that the second letter was merely wanted——

Q. (Interrupting.) Yes; whatever he wrote about that second letter.

A. Certainly I will. I can telegraph for it if you wish it, but I can get it myself better.

Q. Had you or the trustees of the estate of Mr. Robinson any concern in Mr. Hyman's Norfolk business?

A. Not at all, sir.

Q. No interest in the cotton business which he was engaged — there?

A. Not at all, sir.

Q. How about rents and income received from this farm; where were they shown?

A. Shown in the accounts.

Q. Rendered by——

A. (Interrupting.) Hyman.

Q. By Hyman himself?

A. Yes, sir; the money was credited as received.

Q. That was done in the accounts to which you have referred?

A. Not in all cases. Sometime it might have come after the account was made out. It might have come in January. I think this very account, the last account of the rents, came about the 5th or the 10th of January.

Q. But it come in the account sooner or later?

A. Oh, unquestionably, it was all accounted for then it came.

Q. And make a part of this course of accounting that you have referred to?

A. In all cases.

223 Cross-examination by Gen. SMITH:

Q. Mr. Barling, you say that you have been the active executor of the estate of Edward Mott Robinson since his decease?

A. Yes, sir.

Q. Please state definitely what you mean by that and whether you- associate, Mr. Davis, during his lifetime took any part in the administration of the affairs of the estate or not.

A. He did. I mean that I came to Chicago in all cases. Mr. Davis was never here. I came to see about this and other property that we owned here, and, of course, when I went home I consulted with Mr. Davis.

Q. Then is — the fact or not that Mr. Davis gave his assent and approval to what you did?

A. He did, sir.

Q. Is that true of the two letters to which you have referred in your direct examination and which were delivered to the National Exchange Bank of Norfolk?

A. It is true of the second one, but not of the first. I wrote him that I had given such letters and that he would either confirm or disaffirm my action, and he affirmed it.

Q. That is, he affirmed the second letter?

A. Yes, sir.

Q. Did he know of the first letter?

A. No, sir.

Q. Did you understand when you gave the first letter that you had the right to give it without consulting with Mr. Davis?

A. Yes, sir; because I knew if I wrote him he would assent at once, and he did in his second letter.

Q. It was not intended to usurp any authority in giving that letter?

A. Not at all, sir.

Q. You speak of the trustees. Will you please state what you mean when you say "trustees," as distinguished from the executors?

A. There are two accounts kept, one of the executorship.

224 There are two sets of books kept—one of the executors and one of the trustees—trustees of estates that we have here—the Howland block and others, and the executors' accounts are running accounts, and the books are kept, therefore, in separate accounts.

Q. The trustees are trustees under the will, are they not?

A. Yes; for real estate; but there are many other accounts besides real estate on the books.

Q. Then, the trustees are simply trustees of real property?

A. Yes, sir; and of the general property as it is made over from the executors to the trustees. They make a deed of trust and put the items of securities in the trust fund.

Q. Mr. Mandell and Mr. Edward H. Green are the trustees with you?

A. They are the present trustees; yes, sir.

Q. How long have they been the trustees?

A. Mr. Mandell has been trustee since Mr. Robinson's death, in 1865. I was wrong in stating 1879; it was in 1881—May, 1881, if you will amend that, please. Mr. Green took charge at that time, and since 1881 he has acted as one of the trustees.

Q. Upon what books has the account concerning this land in question in this suit, which we have called section 21, been kept?

A. Kept in the executor's books.

Q. Now, who are the present executors of the estate?

A. I am the sole executor.

Q. You are the survivor——

A. Of Mr. Davis; yes, sir.

Q. Are these accounts which have been offered in evidence according to the statements for the years 1883, 1884, 1885, 1886, and 1887 transcripts from the book of the executors?

225 A. Yes, sir.

Q. And do they or not show the form in which the accounts are kept on the books of the executors?

A. Yes, sir.

Q. They do show it?

A. Yes, sir; they show it.

Q. What is meant by the heading of this account (referring to one of the accounts heretofore offered in evidence), "Washington farm"?

A. That was the title of the property. We opened the account originally in that way on the books. It was known as the Washington farm when it was bought, and we opened the account in that way and it has been kept the same way ever since.

Q. You say that it was bought—about half of it—so as to keep it clear; that one-half of it was bought before the contract of 1864 between Mr. Robinson and Mr. Hyman was actually executed?

A. That was executed at the time, 1864.

Q. That one-half was not bought then concurrently with the execution of that contract?

A. Well, within a short time afterwards.

Q. Who made the purchase?

A. Mr. Hyman.

Q. If I understand you, he found that that could be obtained and entered into an agreement with the then owner by which he might buy that undivided one-half?

A. Yes, sir.

Q. And then made an agreement with Mr. Robinson by which Mr. Robinson was to advance the purchase price?

A. That is it, sir.

Q. In 1867, when the second contract was made for the other undivided one-half, what were the circumstances attending the purchase?

A. The other one-half was bought in 1865—I mean the second one-half—but I cannot explain why the contract was not entered into until 1867.

Q. You bought in 1867?

A. Mr. Hyman bought it. He said he had bought it if
226 we could get the consent of Mrs. Green to take it.

Q. Mrs. Green?

A. She was Miss Robinson at that time.

Q. She was then Hetty Howland Robinson?

A. Yes, sir.

Q. She is now Hetty Howland Robinson Green, the wife of Edward H. Green?

A. Yes, sir.

Q. Mr. Hyman had bought it in 1865; he had paid for it?

A. We paid for it at that time.

Q. Oh, you paid for it?

A. Yes, sir.

Q. In 1865?

A. Yes, sir; with the consent of Mrs. Green.

Q. The trustees or the executors?

A. The executors paid for it and the title was taken in their name.

Q. So you had no agreement in writing with Mr. Hyman from 1865 to 1867, although you had paid for the land?

A. It was understood that it was bought on the same terms, yet later on we took the agreement. We then thought it would be better to reduce it to writing and take the agreement.

Q. Then the agreement of 1867 was simply in execution of the understanding you had had with Mr. Hyman prior to that time?

A. Yes.

Q. Concerning the second undivided one-half?

A. That is it, sir.

Q. You say that you had conversations from time to time with Mr. Hyman concerning the sale of this property. Was the sale the subject of discussion between you when you met?

A. It was more as to the price of the land, as to the value of the land.

Q. Did the executors wish to sell at any time?

A. No, sir; not at all.

Q. What gave rise, then, to the discussion?

A. He would say this piece of land will sell for $3,000 an acre, referring to the Northwestern, where the shops are now, and
227 our lots would be worth $4,000, and I would assent to it, or dissent, as the case might be. It was a mere conversation; it was not intended to sell.

Q. Simply a method of ascertaining the probable value, I suppose?

A. Well, it is an outside price that he named for it at that time, I think.

Q. You always understood, didn't you, that he had an interest in the land?

A. I always understood so, sir.

Q. Now, it seems in this account for December 31st, 1885, there is a reference to Mr. Peters—that is to say, under date of October 13th, 1885, there is a debit of $20,000.

A. Yes.

Q. And it is stated, "Said settlement being made by advice of Evarts, Choate and Beaman and assented to by Mrs. H. H. R. Green, as per paper bearing date September 30th, 1885, and also of William H. Peters, as receiver of the Exchange National Bank of Norfolk, Virginia, bearing date of August 12th, 1885." Have you the paper of August 12th, 1885?

A. No, sir.

Q. The paper that is there referred to?

A. No, sir; but I can produce it. You mean from Mr. Peters?

A. Yes.

A. I can produce it.

Q. I would like to have you do so.

A. Yes, sir; I will send it when I send the other letter.

Q. How did you come to ask for a paper from Mr. Peters?

A. Messrs. Evarts, Choate & Beaman advised that we ask him for consent to the settlement.

Q. That was after the execution and delivery of these two letters?

A. Oh, yes.

Q. To the Exchange National bank?

A. Decidedly so.

Q. What was the settlement referred to?

A. $20,000 paid to get a quitclaim deed of all the Washington

heirs; they laid claim to the estate—to the section or half of the section.

Q. They had brought suit, had they not?

228 A. They brought suit, and Mr. Paddock attended to it for us.

Mr. PADDOCK:

Q. That was a bill to redeem from the foreclosure, was it not?

A. Yes, sir.

Gen. SMITH:

Q. Was that suit brought in the United States court here?

A. Yes, sir.

Q. By the heirs of John A. Washington?

A. Yes, sir; they claimed the right to redeem under the foreclosure.

Q. Made by Mr. La Moine, trustee?

A. Yes.

Q. This was paid in settlement of that suit?

A. Yes, sir.

Q. Was Mr. Hyman consulted as to that settlement?

A. What date was it paid?

Q. October 13th, 1885.

A. He was dead, then, I guess. It is dated after his death, but it had been in suit for five years prior to that.

Q. I see that these accounts run only from December 31st, 1883.

A. They are made up annually.

Q. Were they made up annually in the years prior to that time?

A. Yes, sir; they were rendered annually to Mr. Hyman.

Q. In the letters which have been introduced, dated August 7th, 1871, August 7th, 1872, August 17th, 1872, May 2nd, 1873, and March 4th, 1882, there are references to land in section 21. Is that the land in question in this suit?

A. That is the land, sir.

Q. Do you remember making any reply to these letters?

A. No, sir; I do not. I may have done so. If I replied, I think it is noted there, isn't it?

Q. I don't find any notice here except "received."

A. It probably wasn't replied to, then.

Q. In the letter of August 7th, 1871, there is a reference to Mr. Pierce or Col. Pierce. Is that Col. L. H. Pierce?

A. Yes, sir.

Q. Do you know him?

A. Yes, sir.

229 Q. What is his business and where does he live?

A. He is a real-estate man, and he used to be with Kerfoot and Company.

Q. J. H. Reese & Company, you mean?

A. Reese & Company, I should say.

Q. He lived in Chicago?

A. Yes; he lives in Chicago.

Q. Mr. Hyman writes: "I am pleased with your suggestion that the property be withdrawn from the market. I intended to have written you requesting that. On receipt of this, please write Col. Pierce and J. H. Reese & Company unconditionally withdrawing the property from sale."

A. Yes.

Q. Had the property been placed in the hands of J. H. Reese & Company or Col. Pierce for sale?

A. I think likely.

Q. By whom had that been done?

A. I don't know whether it was done by Hyman or ourselves. Pierce is such an awful man to get hold of things. He may have taken hold of it and offered it for sale without our knowing it.

Q. But it would seem that Mr. Hyman had intended to write about it, and from that it would seem that it had been placed in his hands.

A. It would seem so from that letter.

Q. And you think that was the case?

A. I think so.

Q. Was it withdrawn?

A. Right away; yes, sir; it says so, and if *I* told us to do it we did it at that time.

Q. I suppose you had no thought of selling the property—that is, no wish on your part to sell it?

A. No, sir.

Q. You were content to keep it and let it lie?

A. Yes, sir.

Q. You had no thought of selling it in any event without Mr. Hyman's approval?

A. No; I think not, sir.

Q. Do you know anything of the value of property in that vicinity now?

A. I only know that the Northwestern paid $3,000 an acre
230 for their land, about three-quarters of a mile east of us and a little north.

Q. Some north of you?

A. About a mile north.

Q. That is near Austin?

A. East of Austin. That was in 1873 they bought that.

Q. You know nothing of sales lately in that vicinity?

A. No, sir; I do not.

Q. Is this land in its natural state of the same general character as that bought by the Northwestern that you speak of?

A. I think the Northwestern was higher land.

Q. Where does this land lie with reference to the center of the city?

A. It lies between 12th and 22nd streets and Hyman avenue and Western avenue.

Q. Is it southwest of the city—of the center of the city?

A. It is directly west of the city; between 12th and 22nd streets.

Q. Is there any railroad near it?

A. Yes; there is a railroad runs within an eighth of a mile of the land.

Q. What railroad is it?

A. The Wisconsin Central.

Q. Has that been built lately?

A. Within two years.

Q. Is there any other line of railroad near it in operation?

A. Well, the Chicago & Rock Island and the C., B. & Q. runs south of it.

Q. Isn't the Chicago, Burlington & Quincy pretty near it?

A. Well, within three-eighths of a mile or half a mile.

Q. Does this land lie in one body?

A. One body; yes, sir.

Q. How near is it to Douglas park?

A. About two miles, I should think.

Q. Do you know where Ogden avenue is?

A. Yes, sir.

Q. Does that run near this land?

A. Well, it runs not very near it now. Ogden avenue stops this side of it, I think; it runs into the Riverside driveway and Riverside driveway runs south of this land.

Q. How far south of it?

A. Just along the side of the section; it runs along the whole south side of it.

Q. This title "Washington farm" means section 21, does it?

231 A. It does.

Q. It is called "Washington farm" because it was purchased of Mr. Washington?

A. It was know- as that; yes, sir. "Washington farm" is the title on our books at this time.

Q. You say that Mr. Hyman, after he came to live in Chicago, had charge of this property, paid taxes incurred, or authorized whatever expenses were incurred with reference to it. Is that so?

A. Yes, sir.

Q. Did he consult the executors with reference to expenditures?

A. He did.

Q. All of them?

A. Other than taxes. The taxes were fixed.

Q. With reference to improvements?

A. With reference to improvements in all cases.

Q. What improvements were made?

A. There were two houses built; there was an artesian well sunk and there were trees planted.

Q. And drainage or sewerage?

A. Yes; sewers.

Q. Ditches, I suppose?

A. Along the east side and one down the center.

Q. Then you mean to say that Mr. Hyman supervised what was done in those respects and acted with the concurrence of the executors in what he did?

A. He did in all cases.

Q. And drew upon them for outlays?

A. Yes, sir.

Q. Over and above, I suppose, what he might receive?

A. No; he usually remitted the rents and drew for the full amount of the expenses.

Q. When Mr. Buckley came to you in New York at one time, I understood you to say that he was accompanied by Mr. Garnett, the attorney of the bank. At that time had not Mr. Peters been appointed receiver?

A. Yes, sir.

Q. Then did you not mean to say that Mr. Garnett was the attorney for the receiver?

A. Oh, yes; decide-ly so; yes.

232 Q. That was Mr. Theodore S. Garnett, in fact, was it not?

A. Yes, sir.

Q. Judge Garnett?

A. Yes; I think so.

Adjourned till Tuesday, February 21st, 1888, at 10 o'clock a. m.

TUESDAY, *February* 21*st*, 1888—10 o'clock a. m.

Parties met pursuant to adjournment.

HENRY A. BARLING further testified.

Mr. PADDOCK:

Q. Mr. Barling, I will ask you whether you were in Mr. Robert W. Hyman's office yesterday and present at some search that was made with reference to former statements of account by you to Mr. Robert W. Hyman, Sr.

A. I was.

Q. Were any of those former statements found on that occasion?

A. Quite a number. They were in an envelope and endorsed by Mr. Robert W. Hyman in his own handwriting.

Q. Look at the papers I now show you and state what those are (handing papers to witness).

A. These are copies—or rather originals—of the cost of the Washington farm in 1864–'5.

Q. When and by whom were they made out?

A. They were made out in New York. This one (referring to one of the statements) seems to have been made out by William E. Watson, who was the book-keeper, and signed by him for the executors or trustees.

Q. Did they emanate from the executors as accounts rendered to Robert W. Hyman?

A. Yes, sir; precisely the same as the accounts put in yesterday.

Q. They form part of that series?

A. Yes, sir. Do you wish me to read them over?

Q. I should like to have you state the years to which they refer in series. Begin at the beginning and go through with them.

233 A. (Reading from statements:) December 31st, 1864, 1865, 1868—1868 seems to be two years in one—1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, and 1881. One account seems to have gotten in that was not rendered annually—1870. These are the accounts that we found in the envelope marked by Mr. Hyman.

Q. You say "we." Who was in your company in that search?

A. Mr. Robert W. Hyman, Jr., was present at the time they were found.

Q. He is now present?

A. He is now present.

Counsel for defendant- offered in evidence the statements above referred to and to be attached hereto, marked Defendants' Exhibits Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23.

Q. In your examination yesterday you referred to one instance where a contract was made for the sale of the Washington farm, Mr. Barling, and where the party backed out. Was that the only instance in which you had an offer for the property during Mr. Hyman's lifetime?

A. The only instance I know of, sir.

Q. Did that come up to Mr. Hyman's figure of $1,850 mentioned in this letter?

A. No, sir; it did not. He complained very much of the sale and was very glad when the party backed out.

Q. Do you remember the amount?

A. $900 an acre. That was in 1873, when the account stood debited 157,000.

Q. Have you ever, since Mr. Hyman's death, had any offer that came up to his figure of $1,850?

A. No, sir.

Q. What, if any, offers have you had since that time—since his death?

A. We have had an offer within eight months of $1,225 an acre.

Q. At what rate, if any rate was fixed, was the land held in response to that offer by the trustees?

234 A. It was declined by Mr. Green and Mrs. Green, who said that they would not sell at all; they would not name any price.

Q. Was any price mentioned or suggested in responsee to that?

A. Yes; I suggested $1,500 an acre, and they wouldn't sell it at that; they preferred to hold.

Q. They preferred to hold it?

A. Yes, sir.

Q. Have you had any offers either before or since Mr. Hyman's death than those which you have mentioned?

A. No, sir; none at all.

Cross-examination waived.

By agreement of counsel the signature of the witness, Mr Barling, to this deposition was waived.

STATE OF ILLINOIS, }
Cook County, } ss:

I, R. Wilson More, a notary public in and for the county of Cook and State of Illinois, do hereby certify that on the 20th day of February, A. D. 1888, at 2 o'clock p. m., by agreement of counsel and pursuant to the notice hereto attached, personally appeared before me, at the office of Paddock, Aldis & Wright, room 65 Portland block, Chicago, Illinois, Henry A. Barling, a witness to testify on behalf of the defendants in a certain cause now pending in the circuit court of Cook county, Illinois, wherein William A. Peters, receiver, is complainant and R. W. Hyman *et al.* are defendants; and I do hereby further certify that the said witness was first duly sworn to testify the truth in relation to the matter in controversy in said cause so far as he should be interrogated, and that the testimony of said witness was reduced to writing and read to said witness,
235 and that the signature of the said witness to said deposition was waived by agreement of counsel in my presence.

In testimony whereof I have hereunto set my hand and affixed my notarial seal this 21st day of February, A. D. 1888.

R. WILSON MORE,
Notary Public.

($2.00 stamp.) ($2.00 stamp.) ($2.00 stamp.)

I, Edward Mott Robinson, of the city of New York, merchant, do hereby make, publish and declare this to be my last will and testament, that is to say:—

First. I give and devise to my daughter, Hetty Howland Robinson, absolutely and in fee-simple all of the real estate situate in the city of San Francisco, California, commonly known as the North Point Dock warehouse belonging to me.

Second. I give and bequeath absolutely to my said daughter, Hetty Howland Robinson, the sum of nine hundred and ten thousand dollars, to be paid to her by my executors in six months from the time of my decease.

Third. I give and bequeath to Henry A. Barling of the city of New York, a legacy of ten thousand dollars, to Abner H. Davis of the same city a legacy of ten thousand dollars, and to William E. Watson, of New Bedford, Massachusetts, a legacy of one thousand dollars ($1,000) which legacies respectively I direct to be paid in twelve months from my death. I also direct that the salaries of the said Henry A. Barling and Abner H. Davis, under their present employment by me shall go on and continue to be paid up to the first January eighteen hundred & sixty-six.

Edward Mott Robinson.

236 Fourth. I give and bequeath to the town of South Kingston, in the State of Rhode Island the sum of ten thousand dollars, to be paid to the proper authorities of said town by my executors in eighteen months from my death, which sum with such accumulations of interest as may accrue thereon, I direct to be applied to the said town of South Kingston, to build and endow an

institution for educational purposes for the benefit of the inhabitants of said town.

Edward Mott Robinson.

Fifth. All the rest, residue and remainder of my estate, both real and personal remaining after the payment of my debts, after satisfying the bequests and dispositions here-before contained I give, devise and bequeath unto Henry A. Barling, and Abner H. Davis, of the city of New York, and Edward D. Mandell, of New Bedford in the State of Massachusetts, as trustees to be — and holden by them and the survivors and survivor of them upon the trusts following, that is to say, as to the real estate to collect and receive the rents, issues and profits thereof, and as to the personal estate to invest and keep invested the same, with power to call in and change the investments from time to time, such investments and reinvestments to be in such securities and property and in such manner as *to* such trustees shall deem safe and prudent, and to continue so to hold the same in trust during the life of my said daughter Hetty Howland Robinson, and to apply the net rents, issues, profits, interest and income arising from the property embraced in such trust, to the sole and separate use of my said daughter, Hetty Howland Robinson during her life, separate and apart from any husband she may marry and free from the debts, control or interference of any such husband such application to be of such income only from time to time as it shall
237 accrue and be received and not to be subject to and previous disposition or incumbrance by way of anticipation, and upon the death of my said daughter, Hetty Howland Robinson, to convey, transfer and deliver over the capital of such trust estate real and personal as the same shall then exist, to the issue of my said daughter, Hetty Howland Robinson, if any issue, *and* shall leave her surviving in such shares and proportions as my said daughter, Hetty Howland Robinson shall appoint and direct by her last will and testament, and if she shall make no direction or appointment then to such issue in equal shares *per stirpes* and not *per capita*, and in case my said daughter, Hetty Howland Robinson shall leave no issue her surviving, then upon her death to convey, transfer and deliver over the capital of such trust estate real and personal as the same shall then exist, excepting four hundred thousand dollars thereof hereinafter disposed of, in such event, to such person or persons, and for such estates as my said daughter Hetty Howland Robinson shall by her last will and testament direct or appoint, and in default of such direction or appointment, or so far as the same may not extend or be effectual then to the person or persons who by the present laws of the State of New York, would have taken the same as heirs-at-law and next of kin of my said daughter Hetty Howland Robinson if she had died seized and possessed thereof intestate, and as to the said above-named four hundred thousand dollars of such trust estate, I give and bequeath the same at the termination of the said trust upon such contingency of my said daughter
238 dying without leaving issue, in manner following, that is to say, I give and bequeath one hundred thousand dollars

Edward Mott Robinson.

thereof — my brother William A. Robinson, of Providence, Rhode Island, if he be then living, and if he be not living then to the issues then living of said William A. Robinson, in equal shares *per stirpes* and not *per capita*, and one hundred thousand dollars thereof to my sister, Annie A. Chase, of Salem, Massachusetts, if she be then living, and if she be not then living, then to the issue then living of said Annie A. Chase, in equal shares *per stirpes* and not *per capita*, and one hundred thousand dollars thereof to my brother, Attmore Robinson, of South Kingston, Rhode Island, if he be then living, and if he be not then living, then to the issue then living of said Attmore Robinson, in equal shares *per stirpes* and not *per capita* and the remaining one hundred thousand dollars thereof to my brother, Sylvester C. Robinson, of Salem, Massachusetts, if he be then living, and if he be then not living then to the issue then living of said Sylvester C. Robinson, in equal shares *per stirpes* and not *per capita*.

$200 stamp. $200 stamp. $200 stamp. Edward Mott Robinson.

Fifth. I give to the trustees of the trust above created and the survivors and survivor of them power to lease any of the real estate embraced in such trust for any lawful term or terms and likewise power to sell and convey any of such real estate.

And I will and direct that as to such part of *any* estate as at the time of my death shall be invested in ships or inter-sts in ships it shall be at the option of said trustees and likewise of my exec-tors in their discretion when to sell the same and they may continue to hold and run any such ship or ships for the benefit and at the risk and charge of my estate for such time as to them may seem fit.

$200 stamp.

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Sixth. It is my express wish and desire that none of my mercantile obligations, or those of the firm of William T. Coleman & Co., lately dissolved for which I am responsible as partner should be allowed to be protested or dishonored, but that the same shall, notwithstanding my death be punctually met and paid when due, and I authorize and direct my executors so to meet and pay the same, and to apply to such purpose any of my estate which may be requisite therefor and I authorize them if need be so to pay such obligations in advance of my will being admitted to probate and direct that they shall be entitled to indemnity therefor out of my estate.

$200 stamp. $200 stamp. $200 stamp. Edward Mott Robinson.

Seventh. I appoint the before-named Henry A. Barling, Abner H. Davis and Edward D. Mandell, to be executors of this, my will, and I direct that the executor and trustees hereby appointed shall be responsible severally each for his own acts and defaults, and not the one for the other or others.

In testimony whereof, I have hereunto set my hand and seal the sixteenth day of March, one thousand eight hundred and sixty-five.

EDWARD MOTT ROBINSON. [SEAL.]

On this sixteenth day of March, one thousand eight hundred and sixty-five, the above-named testator, Edward Mott Robinson, in our presence subscribed and sealed the foregoing instrument and declared the same to be his last will and testament; and we thereupon, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses.

240 CHARLES F. SOUTHMAYD,
42 Ninth St., New York City.
JOSEPH H. CHOATE,
93 West 21st St., New York City.
TR-ADWELL CLADAND,
No. 74 West 21st St., N. Y. City.

COUNTY OF NEW YORK, } ss:
Surrogate's Office, }

Be it remembered that on the day of the date hereof the last will and testament of Edward Mott Robinson, deceased, being the foregoing written instrument, was duly proved before Gideon I. Tucker, surrogate of said county, according to law as and for the last will and testament of the real and personal estate of said deceased; which said last will and testament and proofs are recorded in this office, in Liber 150 of Wills, page 344.

In testimony whereof the surrogate of said county has hereunto subscribed his name and affixed his seal of office this thirtieth day of June, in the year of our Lord one thousand eight hundred and sixty-five.

GIDEON I. TUCKER, *Surrogate.* [SEAL.]

(5-ct. stamp.)

[On margin:] Two $200 stamps. Fifty-dollar stamp.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Edwin F. Corey, a notary public for the State of New York, duly commissioned and qualified and residing in the city and county of New York, hereby certify that I have compared the foregoing copy of the original last will and testament of Edward Mott Robinson, together with the certificate of the probate of said will, with the said original, and that said copy is a true and cor-
241 rect copy of said original and the whole of the same.

Witness my hand and official seal this seventeenth day of February, A. D. 1888.

EDWIN F. COREY,
[SEAL.] *Notary Public, 60 Wall St., New York.*

[On margin:] Superior court. Abner H. Davis, Edward H. Green, & others. Exhibit No. 1. June 2nd, 1881. W. M. Pritchard, referee.

242 *Washington Farm in Ac. with Henry A. Barling, Ex'r.*

Interest at 7 % to Dec. 31st, 1864.

1864.							
Ap'l	26.	Cash on ac. purchase	6,000		8-5	285	83
		Interest	285	83			
			6,285	83			

Acc't to Dec. 31st, 1865.

1864.							
Dec.	31.	Balance ac. as above	6,285	83	12-0	440	02
1865.							
Ap'l	22.	Cash paid mortgage note	4,500		8-9	230	94
		" " 12 mos. interest on same	270				
June	23.	" " R. W. Hyman's draft	17,050		6-8	623	27
Oct.	20.	" " mortgage note	4,500		2-11	67	71
		" " 18 mos. interest on same	405				
		Interest	1,361	94			
			34,372	77		1,361	94

243 Acc't to Dec. 31, 1868.

1865.							
Dec.	31.	Balance as above	34,372	77	36-0	7,735	35
1868.							
Sept.	8.	Cash paid R. W. Hyman ac. drainage	500		3-23	10	98
	26.	Cash paid R. W. Hyman bal. disb'm't ac.	2,030	99	3-5	37	51
Oct.	9.	Cash paid R. W. Hyman ac. drainage	1,000	00	2-22	15	94
Nov.	10.	Cash paid R. W. Hyman ac. drainage	1,000		1-21	9	91
	19.	Cash paid R. W. Hyman ac. drainage	2,000		1-12	16	33
	21.	Cash paid R. W. Hyman ac. drainage	1,500		1-10	11	67
		Interest	7,837	69			
			50,241	45		7,837	69

Acc't to Dec. 31, 1869.

1868.							
Dec.	31.	Balance acc't as above	50,241	45	12-0	3,516	87
1869.							
M'ch	8.	Cash paid telegram to Pope, Chicago	3	19	9-23		16
May	17.	" " R. W. Hyman's draft	688	33	7-14	73	51
		" " " "	1,000				
	31.	" " " "	1,000		7-0	40	83
June	14.	" " " "	577	75	6-17	58	52
		" " " "	1,000				
	21.	" " " "	1,000		6-10	36	95
	29.	Cash paid Merchants' Ins. Co., Chicago, 2,600 on ea. house, $600 on ea. barn	64		6-2	2	26
July	6.	Cash paid R. W. Hyman's draft ac. buildings	1,050		5-25	35	72
Aug.	23.	Cash paid ac. Riverside park	5,300	83	4-8	131	93
	27.	Cash paid Jno. McCaffrey ac. blds	2,500		4-4	60	28
	28.	Cash p'd " " bal. acc't	225		4-3	5	38
Sept.	1.	Cash p'd ex. chgs on bonds of Chi	8		3-30		19
		Forward	64,608	55		3,962	60
1869.							
Sept.		Am't forward	64,608	55		3,962	60
	13.	Cash paid ac. Riverside park	5,300		3-18	111	30
	21.	Cash paid express chgs on bonds	7	95	3-10		15
Oct.	2.	Cash paid ac. Riverside park	5,300		2-29	91	72
	18.	Cash paid ac. express chgs on bonds	7	95	2-13		10
Dec.	23.	Cash paid Jno. McCaffrey ac. drainage, &c	1,425	08	8	2	22
		Interest	4,168	09			
			80,817	62		4,168	09

E. & O. E.
New York, Jan. 6th, 1870.

HENRY A. BARLING, *Ex'r*,
By WM. E. WATSON.

244 *Washington Farm in Acc't to Dec.* 31, 1870, *with H. A. Barling, Executor.*

1869.							
Dec.	31.	Balance old acc't	80,817	62	12	5,657	26
1870.							
M'ch	4.	Cory & Son, notary	2		9-27		11
	7.	Town of Cicero, taxes	23,160	54	9-24	1,324	03
	12.	Cory & Son, notary	2		9-19		11
May	12.	R. W. Hyman's draft for trees, 450, 800	1,250		7-19	55	66
	21.	R. W. Hyman's draft for trees	800		7-10	34	22
		" " " "	800		7-8	33	90
Nov.	15.	Jno. McCaffery acc't	463	55	1-6	4	14
Dec.	31.	Balance interest	6,095	58			
			$113,391	29		$7,109	43
1870.		Cr.					
M'ch	7.	Town of Cicero, bonds redeemed	15,900				
		Interest on same at 10% (rate account on bonds)	751	83			
		Prepaid taxes returned	1,083	35	9-24	1,013	85
Dec.	31.	Balance interest to Dr.				6,095	58
		Balance	95,656	11			
			113,391	29		$7,109	43

E. & O. E.
New York, May 19th, 1871.

HENRY A. BARLING, *Executor,*
Of WM. E. WATSON.

Taxes paid April 24th, 1871, $17,662.06.

245 "*Washington Farm*" *in Acc't to December* 31*st*, 1871.

1870.							
Dec.	31.	Balance old acc't	95,656	11	12	6,695	92
1871.							
Ap'l	24.	Town of Cicero, taxes	17,662	06	8-7	848	27
May	24.	R. W. Hyman's expenses, &c.	1,159	34	7-7	48	90
June	29.	Jno. McCaffery's acc't	902	10	6-2	31	92
Oct.	25.	Mchs.' & Traders' Ins. Co. on houses, &c.	160		2-6	2	05
Dec.	31.	Bowers, notary, on copy of abstract	5				
		Interest	7,627	06		7,627	06
		Balance to new acc't	123,171	67			

New York, Jan. 16th, 1872.

"*Washington Farm*" *in Acc't to Dec.* 31*st*, 1872.

1871.							
Dec.	31.	Balance old acc't	123,171	67	12	8,622	02
1872.							
Aug.	8.	Surrogate copy of will	7	30	4-23		19
	28.	R. W. Hyman, draft for taxes	3,354	74	4-3	80	24
Oct.	17.	Fire insurance on houses, &c	80		2-14	1	15
	22.	Expenses Mr. Barling & Mr. Mandell at Chicago	12		2-9		16
Nov.	11.	R. W. Hyman, draft for will	1,000		1-20	9	72
	18.	" " " "	1,000		1-13	8	36
		Interest to date	8,721	84		8,721	84
Dec.	31.	Balance to new acc't	137,347	55			

New York, Jan'y 28th, 1873.

BARLING & DAVIS, *Executors,*
For WM. E. WATSON.

246 *"Washington Farm" in Acc't with Henry A. Barling, Executor.*

Interest at 7 % to Dec. 31st, 1873.

1872.							
Dec.	31.	Balance old acc't	137,347	55	12-0	9,614	36
1873.							
Jan.	9.	R. W. Hyman, bal. his account	817	74	11-22	55	98
	21.	" draft acc't well	1,000		11-10	66	11
Feb'y	15.	" Jr., bal. acc't	1,624	67			
		" draft acc't well	1,000		10-16	161	29
May	15.	Mr. Barling's exp's to Chicago	112				
		Sundry telegrams (5)	19	19	7-16	5	75
June	3.	R. W. Hyman's draft	550		6-28	22	24
July	9.	" "	300				
		Evarts, Southmayd & Choate bill	150		5-22	15	05
Aug.	5.	R. W. Hyman's draft	300		4-26	8	52
	9.	Town Cicero, taxes	3,000	56	4-22	82	86
Sept.	11.	R. W. Hyman, bal. acc't	275	18	3-20	5	88
Oct.	3.	R. W. Hyman, Jr., draft	140	75	2-28	2	41
	18.	Fire insurance on houses	80		2-13	1	14
Dec.	1.	R. W. Hyman, Jr., draft	663	05	30	3	86
		Interest to date	10,045	45		$10,045	45
		Am't due Dec. 31, 1873	$157,426	14			

E. & O. E.
New York, Jan'y 7th, 1874.

HENRY A. BARLING, *Executor*,
For WM. E. WATSON.

247 *"Washington Farm" in Acc't with Henry A. Barling, Executor.*

Interest at 7 % to Dec. 31st, 1873.

1873.							
Dec.	31.	Balance of old acc't	157,426	14	12	11,019	82
1874.							
Ap'l	17.	Expenses Mr. Barling to Chicago	150		8-14	7	41
July	9.	R. W. Hyman Jr.'s draft	400		5-23	13	37
	28.	Evarts, Southmayd & Choate's bill	90		5-23	2	68
Sept.	24.	Cook County taxes	2,933	12	3-7	55	32
Oct.	17.	Mechanics' & Traders' Ins. Co. on houses	80		2-14	1	15
Nov.	4.	R. W. Hyman Jr.'s acc't	1,937	17	1-27	21	46
Dec.	31.	Interest to date	11,121	21		11,121	21
		Am't due Dec. 31, 1874	174,137	64			

E. & O. E.
New York, Jan'y 13, 1875.

HENRY A. BARLING, *Executor*,
For WM. E. WATSON.

Washington Farm in Acc't with Henry A. Barling, Executor.

Interest at 7 % to Dec. 31st, 1875.

1874.							
Dec.	31.	Balance old acc't	174,137	64	12-0	12,189	66
1875.							
July	19.	Chicago taxes for 1875	1,866	80	5-12	58	81
Aug.	26.	R. W. Hyman Jr.'s draft	1,000		4-11	25	47
Sept.	16.	" " "	250		3-15	5	10
Oct.	16.	Fire insurance on buildings	80		2-15	1	17
	28.	Ayer & Kair's retainer in suit *vs.* Chew *et al.*	250		2-3	3	06

Nov.	22.	Expenses H. A. Barling, Jr., to Warrenton, Va., including court fees for copies of will of Mr. Jno. A. Washington, accountings, etc., etc	92 70	1-9		70
	30.	Sundry telegrams to R. W. Hyman, Jr.	4 74	1-1		03
		Interest on acc't	12,284			12,284
		Am't due Dec. 31, 1875	$189,965 88			
1875.						
Dec.	31.	Balance as above	$189,965 88			

E. & O. E.
New York, March 2nd, 1876.

HENRY A. BARLING, *Executor*,
By WM. E. WATSON.

248 *Washington Farm in Acc't with Henry A. Barling, Ex'r.*

Interest at 7 % to Dec. 31, 1876.

1875.						
Dec.	31.	Balance old acc't	189,965 88	12-0	13,297 62	
1876.						
Jan.	11.	Evarts, Southmayd & Choate bill	750	11-20	51 04	
Sept.	2.	Chicago city taxes	1,932 94	3-29	44 71	
Oct.	26.	Fire insurance on buildings	80	2-5	1 01	
Dec.	27.	Ayer & Kale's bill	4 50	4		
	31.	Balance interest	13,394 38		13,394 38	
		Am't due Dec. 31, 1876	$206,127 70			

E. & O. E.
New York, Jan. 16th, 1877.

HENRY A. BARLING, *Ex'r*,
By WM. E. WATSON.

"Washington Farm" in Account to Dec. 31, 1877, with Henry A. Barling, Ex'r.

1876.					
Dec.	31.	Balance old account	206,127 70		
1877.					
Ap'l	16.	Evarts, Southmayd & Choate bill	168 85		
	20.	R. W. Hyman, Jr., & Co. draft	1,023 20		
July	28.	R. W. Hyman, Jr., & Co. draft for taxes, etc.	2,099 23		
Oct.	20.	Ayer & Kale's fees in suit of Chew *et al.*	500		
Nov.	3.	Mechs.' & Traders' Fire Ins. Co., on buildings	68		
		1 year's interest on 206,128			14,428 96
		8 mos. 15 ds. " 169			8 38
		8 mo. 11 ds. " 1,023			49 93
		5 mo. 3 ds. " 2,099			62 44
		2 mo. 11 ds. " 500			6 90
		1 mo. 28 ds. " 68			74
		Interest to date	14,557 35		14,557 35
		Balance to Dr. in new acc's	224,544 33		
1877.					
Dec.	31.	Balance old acc's	224,544 33		

E. & O. E.

HENRY A. BARLING, *Ex'r*,
By WM. E. WATSON.

249 *Washington Farm in Account Current and Interest Account to Dec. 31st, 1878, with Henry A. Barling, Ex'r.*

1877.		Dr.				
Decm. 31.	Balance old account	$224,544	33	1 yr.	$15,718	10
1878.						
Jan'y 24.	Paid Edwin F. Corey, notary	14	25	341		93
July 18.	Paid R. W. Hyman, Jr., & Co.'s draft for taxes of 1877	2,260	27	166	72	95
Novm. 8.	Paid Mechanics' & Traders' Fire Ins. Co. fire insurance	39	32	53		40
16.	Paid F. H. Kales on ac. legal services	500		45	4	38
Decm. 31.	Balance of interest	15,764	38			
		$243,122	55		$15,796	76
Dec. 31.	Balance old account	$242,445	05			

Washington Farm in Account Current and Interest Account to December 31st, 1878, with Henry A. Barling, Ex'r.

1878.		Cr.				
Ap'l 29.	Rec'd of R. W. Hyman, Jr., & Co. ac. rent of farm, as per their ac.	677	50	246	32	38
Dec. 31.	Balance of interest				15,764	38
	Balance	242,445	05			
		$243,122	55		$15,796	76

E. E.
New York, Jan'y 27th, 1879.

HENRY A. BARLING, *Executor.*

250 *Washington Farm in Account Current & Interest Account to Dec. 31st, 1879, with Henry A. Barling, Executor.*

1878.		Dr.				
Dec. 31.	Balance old account	$242,445	05	1 yr.	16,971	15
1879.						
July 24.	Paid R. W. Hyman, Jr., & Co.'s draft for taxes 1878	3,577	78	160	111	31
Dec. 31.	Balance of interest	17,022	53			
		$263,045	36		$17,082	46
Dec. 31.	Balance old account	$262,022	16			

Washington Farm in Account Current & Interest Account to Dec. 31st, 1879, with Henry A. Barling, Executor.

1879.		Cr.				
Jan. 17.	Rec'd of R. W. Hyman, Jr., & Co.	498	20	348	33	69
Ap'l 18.	Rec'd of R. E. Hyman, Jr., & Co.	525		257	26	24
Dec. 31.	Balance of interest				17,022	53
	Balance	$262,022	16			
		$263,045	36		17,082	46

E. E.

New York, Jan'y 15th, 1880.

HENRY A. BARLING, *Executor.*

251 *Washington Farm in Account and Interest Account to December 31st, 1880, with Henry A. Barling, Executor.*

1879.		Dr.			
Dec. 31.	Balance old account	$262,022 16	1 yr.	18,344 27	
	Paid Mechanics' & Traders' Fire Ins. Co. 1 year's insurance from Nov. 5, '79.	39 32	1		
1880.					
Jan'y 19.	Paid R. W. Hyman, Jr., & Co. draft	297 44	347	20 03	
Ap'l 26.	Paid R. W. Hyman for taxes	3,169 70	249	253 48	
Nov. 5.	Mechanics' & Traders' Fire Ins. Co. 1 yr. insurance	39 32	56	42	
Dec. 31.	Balance of interest	18,489 53			
		$284,057 47		$18,518 20	
Dec. 31.	Balance	283,632 47			

Washington Farm in Account and Interest Account to December 31st, 1880, with Henry A. Barling, Executor.

1880.		Cr.		
Jan. 19.	Rec'd of R. W. Hyman, Jr., & Co.	425	347	28 67
Dec. 31.	Balance of interest			18,489 53
	Balance	283,632 47		
		$284,057 47		$18,518 20

E. & O. E.
New York, Dec. 31st, 1880.

HENRY A. BARLING, *Executor.*

252 *Washington Farm in Account and Interest Account to December 31st, 1881, with Henry A. Barling, Executor.*

1880.		Dr.		
Dec. 31.	Balance old account	$283,632 47	1 yr.	$19,854 24
1881.				
March 17.	Paid Evarts, Southmayd & Choate, legal advice, &c	500	289	28 10
April 28.	Paid R. W. Hyman, Jr., & Co. draft for taxes	2,449 91	247	115 51
May 20.	Paid F. H. Kales, ac. legal expenses	1,500	225	65 62
Dec. 2.	Paid Mechanics' & Traders' Fire Ins. Co.	39 32	29	22
31.	Balance of interest	20,030 42		
		$308,152 12		$20,063 69
Dec. 31.	Balance	$306,789 60		

Washington Farm in Account and Interest Account to December 31st, 1881, with Henry A. Barling, Executor.

1881.		Cr.		
Aug. 22.	Rec'd of R. W. Hyman, Jr., & Co., as per their ac. Aug. 20, '81	$1,362 52	131	33 27
Dec. 31.	Balance of interest			20,030 42
	Balance	306,789 60		
		$308,152 12		$20,063 69

E. & O. E.
New York, Dec. 31st, 1881.

HENRY A. BARLING, *Executor.*

253 *Washington Farm in Account and Interest Acc't to December 31st, 1883, with Henry A. Barling, Executor.*

Int. at 7 %.

1882.		Dr.			
Dec. 31.	To balance per ac. rendered	330,886 76	1 yr.	23,162 07	
1883.					
M'ch 12.	" paid R. W. Hyman, Jr., & Co.'s draft for general taxes 1882	2,729 73	294	156 06	
July 23.	" paid R. W. Hyman, Jr., & Co.'s d'ft for am't paid Henry W. Bishop in case of Chew *et al.*	248 40	161	7 76	
Sep. 22.	" paid telegram to Chicago	1 66	100	03	
Oct. 15.	" " H. A. Barling's expenses to Chicago	130 00	77	1 95	
Nov. 5.	" " R. W. Hyman, Jr., & Co.'s d'ft for services paid James T. Murry	100 00	56	1 08	
" 7.	" paid Mechanics' & Traders' Fire Ins. Co., ins. on buildings to Oct. 17, '86.	78 63	54	83	
Dec. 5.	" paid R. W. Hyman, Jr., & Co.'s d'ft to pay Paddock & Aldis retainer fee in case Chew *et al.*	250 00	26	1 26	
" 31.	" balance of interest	23,271 21			
		$357,696 39		$23,331 04	
1883.					
Dec. 31.	To balance	$356,498 65			

E. & O. E.

Washington Farm in Account and Interest Ac. to December 31st, 1883, with Henry A. Barling, Executor.

Int. at 7 %.

1883.		Cr.			
M'ch 12.	By rec'd rebate on taxes	26 90	294	1 54	
April —.	" " R. W. Hyman, Jr., & Co., as per their ac. Apr. 17, '83	1,170 84	256	58 29	
Dec. 31.	" balance of interest			23,271 21	
" "	" to debit	356,498 65			
		$357,696 39		$23,331 04	

New York, December 31st, 1883.

(Signed) HENRY A. BARLING, *Executor.*

254 *Washington Farm in Account Current and Interest Account to Dec. 31st, 1884, with Henry A. Barling, Executor.*

1883.		Dr.			
Dec. 31.	To balance per ac. rendered	356,498 65	1 yr.	24,954 90	
1884.					
May 2.	" paid R. W. Hyman, Jr., & Co.'s draft for Cook county, Ills., taxes 1883	3,157 65	243	149 16	
" 5.	" paid R. W. Hyman, Jr., & Co.'s draft for J. T. Murray, services in suit	200 00	240	9 33	
June 4.	" paid Evarts, Southmayd & Choate, legal services to Jan. 1, '84	250	210	10 21	
" 30.	" paid Vincent Tilyore, fire ins. prem. on buildings from June 11, '85, to June 11, '87, in German-Amer'n Ins. Co., policy # 487	61 62	184	2 22	
Sept. 1.	" paid H. A. Barling, sundry expenses	1 10	121	02	
Nov. 8.	" paid " telegrams	75	53	01	
" 10.	" paid Paddock & Aldis, legal expenses Chew case	571 73	51	5 66	
Dec. 31.	" balance of interest	25,130 27			
		$385,871 77		$25,131 51	
Dec. 31.	To balance	$385,818 44			

255 *Washington Farm in Account Current and Interest Account to Dec. 31st, 1884, with Henry A. Barling, Executor.*

Int. at 7 %.

1884.		CR.				
Sept.	2.	By rec'd Mechanics' & Traders' Fire Ins. Co., return premiums on policies canceled	53 33	120	1 24	
Dec.	31.	Balance of interest			25,130 27	
"	"	" to debit	385,818 44			
			$385,871 77		$25,131 51	

New York, Dec. 31st, 1884.

HENRY A. BARLING, *Executor.*

256 *Washington Farm in Acc't Current and Int. Acc't to Dec. 31st, '85, with Henry A. Barling, Executor.*

Int. at 7 %.

DR.					CR.	
1884.						
Dec.	31.	To balance *for* acc't rendered	385,818 44	1 yr.	27,007 29	
1885.						
May	2.	" p'd R. W. Hyman, Jr., & Co., d'ft Cook county, Ill., taxes 1884	3,358 53	243	158 70	
Sept.	27.	" H. A. Barling's expenses to and from Chicago	81 47	95	1 50	
Oct.	13.	" thro' R. W. Hyman, Jr., & Paddock & Aldis, att'ys, for settlement in full of the case of Chew *et al. vs.* property known as section 21, Cook county, Ill., said settlement being made by advice of Evarts, Choate & Beaman and assented to by Mrs. H. H. R. Green as her paper, bearing date of September 30, '85, & also of Wm. H. Peters, receiver of Exchange Nat'l bank, Norfolk, Va., bearing date Aug. 12, '85	20,000	79	307 22	
Nov.	7.	" Paddock & Aldis for legal fees and services in settlement of case of Chew *et al. vs.* section 21, d'ft of R. W. Hyman, Jr., & Co	248	54	2 60	
Dec.	16.	Evarts, Choate & Beman in full for legal services and disbursements to date in — of Chew *et al. vs.* section 21	1,015 55	15	2 96	
	31.	" balance of interest	27,399 86			
			$437,921 85		$27,480 27	

257 Int. at 7 %.

1885.		CR.				
Feb'y	24.	By rec'd thro' R. W. Hyman, Jr., & Co., acc't rents, &c	1,153 00	310	69 50	
Sept.	30.	By rec'd thro' R. W. Hyman, Jr., & Co., acc't rents, &c	609 80	92	10 91	
Dec.	31.	" balance of interest			27,399 86	
"	"	" to debit	436,159 05			
			$437,921 85		$27,480 27	
'85.						
Dec.	31st.	Balance to debit	$436,159 05			

E. & O. E.
New York, Jan'y 9th, '86.

HENRY A. BARLING, *Executor,*
Per A. A. RICHMOND.

258 *Washington Farm in Account Current and Interest Acc't to Dec. 31st, 1886, with Henry A. Barling, Executor.*

Dr.		Int. at 7 %.			Cr.
1885.		Dr.			
Dec. 31.	To balance per acc't rendered	436,159 05	1 yr.	30,531 13	
1886.					
M'ch 8.	" balance paid R. W. Hyman, Jr., & Co., d'ft to pay town of Cicero taxes 1885	3,312 90	298	191 96	
Dec. 31.	" balance of interest	30,722 68			
		$470,194 63			$30,723 09
1886.					
Dec. 31.	To balance	$469,131 30			

Int. at 7 %.

1886.		Cr.		
Dec. 29.	By rec'd R. W. Hyman, Jr., & Co., acc't rents, &c.	1,063 33	2	41
" 31.	" balance of interest			30,722 68
" "	" " to debit	469,131 30		
		$470,194 63		$30,723 09

E. & O. E.
New York, December 31st, 1886.
(Signed) HENRY A. BARLING, *Executor.*

259 Copy.

Washington Farm (Sec. 21) in Account to Dec. 31, '87, with Henry A. Barling, Executor.

Interest at 7 %.

1886.			Time.	
Dec. 31.	To bal. per acc't rendered	$469,131 30	1 yr.	$32,839 19
1887.				
Mar. 7.	To paid d'ft R. W. Hyman, Jr., taxes	2,894 36	9–24	165 78
June 3.	" " Henry A. Barling, gen'l ex.	75 00		
" "	" " Vincent Tilyore, fire ins.	61 62	6–28	2 53
Oct. 3.	" " Henry A. Barling, expenses to Chicago	65 00	2–28	1 10
Nov. 11.	" " Paddock & Aldis, acc't legal services	250 00	1–20	2 43
Dec. 31.	" balance of interest	33,011 03		$33,011 03
		$505,414 06		

E. & O. E.
New York, Decm. 31, 1887.
HENRY A. BARLING, *Ex'r.*

Copy.

260 Rec. Aug. 8, 1871.

RICHFIELD SPRINGS, *Aug. 7th*, 1871.

Messrs. Barling & Davis, 46 South St., N. Y.

DEAR SIRS: I duly rec'd your two favors of 1st & 4th inst. I was quite provoked at the contents of Mr. Pierce's letter to you. How he could have the cheek to write such a letter after his final conversation with us I cannot account. Your reply was all right. I should have written st-onger. It has lessened him in my estimation. Mr. F. H. Kales, of Chicago, reached here the same day I

did, having left Chicago the day that Pierce wrote his letter. He called to see me early Tuesday morning before I rec'd your letter with a copy of Pierce's. His accounts about real estate in Chicago and vicinity are very different from Pierce's, & he gave it as his decided conviction and judgment that sec. 21 would within five years *seel* from $2,500.00 to $3,000.00 p'r acre. I showed him your reply to Pierce, & he seemed pleased that your predi*t*cion and his were so near the same. He says by all means withdraw it from market, and when we want to sell have nothing to do with real-estate agents. The property is too large and valuable; that at the proper time we can sell it ourselves, and when we do sell enter into no written contract or agreement, but after the terms are agreed upon hand him, the purchaser, the abstract of title. If he accepts them make the conveyance. He says this is the course Geo. A. Robins has pursued with satisfactory results. (The resale of the property sold by Robbins at a reported large advance was an arrangement to raise money. Mr. McCormick, the reported purchaser, only
261 lent money & took an option to buy at a future day or have his money back with interest.) I am pleased with your suggestion that the property be withdrawn from market. I intended to have written you requesting that on receipt of this please write Col. Pierce & J. H. Rees & Co., unconditionally withdrawing the property from sale.

I should be much pleased if your Mr. Barling could come up during my stay. My health has somewhat improved.

Please write me.

Very truly y'rs, R. W. HYMAN.

Rec'd Aug. 9.

CHICAGO, *Aug. 7th*, 1872.

Messrs. Barling & Davis, 46 South St., New York.

GENTS: I reached here safely Monday morning last; found everything going on lively. Sales of real estate heavy, especially on the West Side. I send you the late paper as to sales, &c. Mr. McCaffery promises me that he will see that the ditches around sec. 21 are cleaned, so I shall draw on you for the taxes, $3,354.74; have not yet closed sale of blocks 18, 19, and 20, corner Ash*al*nd Ave. and 12th St., and shall determine tomorrow, and will advise you. From present indications it look- as — we shall be able to sell part of sec. 21 at one thousand dollars per acre at least. I have made no efforts to a sale as yet; shall hold it above that price per acre, and will keep you advised. Please write me often.

Very truly y'rs, R. W. HYMAN.

262 CHICAGO, *Aug. 17th*, 1872.

Mess. Barling & Davis, 46 South St., New York.

GENT-: I am today in rec'pt y'rs of the 14th inst. in reply to mine of the 12th; on the 13th I wrote you, enclosing the releases of the mortgages on bl'ks 18, 19, & 20 as prepared here, which I hope you duly rec'd. While releasing the lien on sec. 21 to secure the

estate for the loan of $45,000.00 on bl'ks 18, 19, & 20 why not also release the lien to secure the loans on bl'ks 53 & 60, as these two blocks will today sell for over fifty thousand each, or rather I am by several parties offered $50,000.00 for bl'k 53 & $55,000.00 for bl'k 60? Of course you will do as you wish. I merely make the suggestion. I also gave you the particulars as to the am't to be mortgaged on each of the bl'ks: $20 M, 2 of $10 M on bl'k 18; 2 of $8 M each on bl'k 19, & 2 of $7 M ea. on bl'k 20, making in all $50,000.00.

These different sums represent the difference in the value of the bl'ks. I have this day drawn on you for $3,354.74, as p'r enclosed rep't of A. O. Butler, collector of taxes for the town of Cicero. I don't think of talking of section 21 at anything under $1,500.00 an acre now. I will write more in a day or two. I trust Mr. Barling will come out. The weather is nothing like as hot as you seem to have it with you.

Very truly y'rs, R. W. HYMAN.

263 Rec'd May 5.

CHICAGO, *May 2nd*, 1873.

Messrs. Barling & Davis, 46 South St., N. Y.

DEAR SIRS: I had this pleasure yesterday. I am sorry to report another set back in transplanting the trees & other improvements on sec. 21. We had last night a heavy thunder storm, with pouring-down rain. Mr. Kelly was in this a. m. & reports a partial check to his operations. I trust this is the breaking up of the terribly bad weather we have had this spring, and that we shall have time to finish transplanting the trees, &c.

I enclose copies of the leases or contracts for the 11 months ending 31st March, 1874. You will observe that I have changed the agreement with Mr. Kelly a little from what I wrote you. Upon reflection I concluded that to aid him in cultivating the trees, mowing the hay, ploughing, &c., a boy 15 or 16 years old would be almost equal to a man, so I concluded to give him at the rate of one hundred dollars a year more if he would find & furnish a boy. This he agreed to and I so drew up the agreement. I hope this alteration will meet your approval. That part of the section lot to Kelly north of Barry Point road is so heavily grown with weeds that I think we had better have it ploughed & put in corn.

I hope, however, Mr. Barling will come out here during this month, when we can agree upon such improvements as may be deemed judicious for the ensuing season. You will see I have let the so. ½ to a Mr. Jno. Haws, whose wife is the active man of the two.

They are English people; have be-n here quite a number of years & have accumulated some property. They are sober and industrious.

264 I am much pleased with what I have seen of them and feel that the south ½ of the section will look much better one year from today than it does now. I am happy to have gotten rid

of Dolease & Co. They have not paid their last ¼ rent, but promise to do so in a few days.

I was asked yesterday what we hold sec. 21 at. I replied, "Our price last year was $1,500.00, but our price this year is $2,500.00 per acre." We have taken an office at 155 La Salle St. with fireproof vaults. So I send you copies of the agreements; will take the originals with me when I go to New York if you prefer to have them there.

Very truly y'rs, R. W. HYMAN.

265 R. A. A., Mar. 6.

R. W. Hyman, Jr., & Co., real estate and loans, 192 Dearborn street, Chicago.

MARCH 4TH, 1882.

H. A. Barling, Esq., ex'r, 46 South St., N. Y.

DEAR SIR: Mr. Eldridge and myself have concluded that the cost of thinning out the nursery and transplanting the trees to meet the immediate necessities will cost between five hundred and one thousand dollars and not to exceed one thousand, and I have requested Mr. Kales to procure for the court the necessary authority for you to advance not exceeding one thousand dollars.

Should this not be satisfactory to you, telegraph me Monday morning, as Mr. Kales will apply to court Monday for the authority. Of course I shall expend as little as possible, and don't think it will am't to one thousand.

The Belt R. R., ¼ mile east of the section, is graded up to the Northwestern R. R. track. It is thought that this improvement will give an impetus to real estate in that vicinity. The man (Mr. Olinger) who owns the 10 acres just east of the house in which Eldridge lives on the section has refused one thousand dollars per acre for it. He was offering it — less money one year ago.

Very truly y'rs, R. W. HYMAN.

266 Aff't of W. W. Vicar.

In the Circuit Court of Cook County.

WILLIAM H. PETERS, Receiver, &c., *v.* ROBERT W. HYMAN, JR., Adm'r, *et al.* } In Chancery.

It is hereby stipulated by and between the counsel of the respective parties that the letters of Henry A. Barling, executor, hereto attached, may be considered and read as a part of his deposition herein; that the copies of a letter of *of* J. B. Whitehead and of William H. Peters, receiver, hereto attached, may be read on the hearing of this cause without further proof, and that the affidavit of W. W. Vicar, dated February 28, 1888, with the exhibit attached thereto, hereto attached, may be considered as a part of the deposition of said Vicar.

SMITH & PENCE, *Comp't's Sol'rs.*
PADDOCK, ALDIS & WRIGHT,
Sol'rs for Def'ts.

NEW YORK, *Feb'y* 25, 188 (5)[6].

Wm. H. Peters, receiver, Norfolk, Va.

DEAR SIR: I duly received your favor of 19 inst., and it should have had earlier attention. The original agreements between
267 Mr. Hyman & Mr. Robinson & also with the executors were sent to Chicago for the purpose of using them in the suit which we had with the Washington heirs, and are there still on file in the U. S. district court. I have written Mr. R. W. Hyman asking him to try and get them for me; but, if he cannot, I have here notarial copies, & if it will serve your purpose as well I will put them in the hands of a notary to copy for you, & will, when sending them, furnish you with a statement of the amount due the executors for purchase, taxes, &c., &c. Please let me hear from you.

Very truly yours, HENRY A. BARLING, *Ex'r.*

NEW YORK, *Mar.* 1, 1886.

Wm. H. Peters, Esq., receiver, Norfolk, Va.

DEAR SIR: I have your favor 26 ulto. Since writing you on the 25th ulto. I have received from Chicago the original agreement between Mr. R. W. Hyman and the late Mr. Edw'd Mott Robinson and also the one between Mr. H. and Mr. Robinson's executors, & I now hand you notarial copies of same.

The account with the property which was bought under these agreements is made up annually, & the amount due the estate, as per acc. rendered Mr. R. W. Hyman, a'mr, to Dec'r 31, 1885, is $436,159.05. I enclose Edwin F. Corey's bill, four dollars, for making copies, which kindly remit & oblige

Yours truly, HENRY A. BARLING, *Executor.*

268 NEW YORK, *Aug.* 14, 1885.

Wm. H. Peters, Esq., receiver Exchange Nat'l bank, Norfolk, Va.

DEAR SIR: I am in receipt of your valued favor of 12 inst., informing me that Mr. F. M. Hyman had read to you my letter to him under date of 10 inst. relative to making a compromise of certain land in Cook county, Ills., & which case is now on appeal to the Supreme Court of the U. S. I am pleased to note that you approve of the proposed settlement and will allow the sum paid to be charged against the property the same as though it had been paid for taxes or other liens, & I remain

Yours truly & resp'y,

HENRY A. BARLING, *Executor.*

1137.

Exchange National Bank of Norfolk, Va.

Capital, $300,000; surplus, $150,000.

OCT. 18, 1884.

Henry A. Barling, Esq., executor.

DEAR SIR: In regard to the paper of Oct. 1, 1883, relative to your holding certain proceeds of property in the event of sale subject to our claim against parties therein named, I would prefer holding it as showing the beginning of the transaction. I here state, however, that we only claim benefits to the amount of one hundred thousand dollars, as named in the paper signed by you this year.

Yours respectfully, JNO. B. WHITEHEAD, *Pr.*

1137.

Receiver's office the Exchange National Bank of Norfolk, Va.

Capital, $300,000; surplus, $150,000.

AUGUST, 12, 1885.

269 Henry A. Barling, Esq., 46 South St., P. O. box 2821, New York:

DEAR SIR: Mr. F. M. Hyman has read to me your letter to him of 10th inst. and I have considered its contents, all relating to a certain section of land near Chicago in which the bank is interested. I note the proposition for a settlement of the suit pending in the court by compromise and I approve of the proposed settlement and will allow the sum paid to be charged against the property, the same as though it had been paid for taxes or other liens.

Respectfully yours, WM. H. PETERS, *Receiver.*

This indenture made this 16th day of June, 1884, between R. W. Hyman of the city and State of New York, F. M. Hyman and Geo. L. Arps of the city of Norfolk, and State of Virginia, composing the firms of Hyman and Dancy of Norfolk, Va., and Dancy, Hyman & Co., of New York, N. Y. of the first part and W. W. Vicar, trustee of the county of Norfolk and State of Virginia of the second part. Witnesseth:

Whereas, the said parties of the first part are indebted to Longnemare in the sum of sixty-one hundred and forty-three dollars and twenty-seven cents as is evidenced by the drafts of Hymans and Dancy on Dancy, Hyman & Co., in favor of the said E. Longnemare as follows: One dated February 21, 1884, payable December 30th, 1884, for $3,098.94 and one dated February 23, 1884, payable December 30, 1884, for $3,044.33 the said drafts having been given in settlement for 350⅓ tons Premium guano bought by Hy-
270 mans and Dancy from E. Longnemare and whereas, the said parties of the first part are also indebted to Read & Company of New York in the sum of ten thousand, five hundred and thirty-

six dollars and fifteen cents as is evidenced by the draft of the said Hymans and Dancy on the said Dancy, Hyman & Co. in favor of the said Read & Company as follows, one dated January 8, 1884, payable November 30, 1884 for $2,764.78, one dated January 10, 1884, payable December 18, 1884 for $2,772.80, one dated January 30, 1884, payable December 15, 1884, for $2,497.68, one dated January 30, 1884, payable December 23, 1884 for $2,500.89, the said drafts having been given in settlement for 517 tons Premium guano bought by the said parties of the first part from the said Read & Company and, whereas the said parties of the first part are also indebted to the Geo. W. Miles Company of Milford, Conn., in the sum of twelve thousand seven hundred and eighty-two dollars as is evidenced by the drafts of the said Hymans & Dancy or the said Dancy, Hyman & Co., in favor of the said The Geo. W. Miles Company, as follows one dated November 5, 1883, payable 13 months after date for $2,744.50 one dated November 20, 1883, payable 13 months after date for $2,744.50 one dated November 30, 1883, payable 13 months after — for $2,744.50, one dated January 8, 1884, payable 11 months after date for $1,900, one dated January 12, 1884, payable 11 months after date for $1,900 one dated January 14, 1884 payable 11 months after — for $748.50, the said drafts having been given in settlement for 699 tons Premium guano bought by the said parties of the first part from the said The Geo. W. Miles Company, and all the hereinbefore-mentioned drafts of Hymans & Dancy having been duly accepted by Dancy, Hyman & Co., and whereas, the said parties of the first part are desirous of securing the payment
271 of all of the said drafts. Now, therefore, the said parties of the first part for and in consideration of the premises and of the sum of one dollar to them in hand paid, by the said W. W. Vicar, the receipt whereof is hereby acknowledged, have bargained, sold, assigned, and transferred, and they do hereby bargain, sell, assign and transfer to the said W. W. Vicar all their right, title, interest, claim and estate in and to all contracts accounts, notes and other evidences of debt due to parties of the first part on account of the 1,566⅔ tons Premium guano hereinbefore specified, as may be shown by the books of said Hymans & Dancy or by the statements of their agents, as well as to all of said Premium guano remaining in their hands or *in their hands or* in the hands of their agents unsold, including about 145 tons of Premium guano in the Tunis warehouse in the city of Norfolk. To have and to hold the said contracts, accounts, notes and other evidences of debt and Premium guano unto him the said W. W. Vicar his heirs and assigns in fee forever.

In special trust and confidence however, that the said W. W. Vicar, shall as speedily as practicable collect the debts and sell the guano herein conveyed at such times and in such manner at private or public sale, as he may deem best for the carrying out the purpose of this trust, and after paying all expenses attending such collections and sales, apply the remainder of the funds or so much thereof as may be necessary towards the payment of the drafts hereinbefore enumerated in the following order, that is to say, 1st, draft

favor of Read & Co., dated January 8, 1884, payable November 30, 1884 for $2,764.78, 2nd draft favor of the Geo. W. Miles Co.,
272 dated November 5, 1883 payable 13 months after date for $2,744.50, 3rd draft favor of the Geo. W. Miles Co., dated January 8, 1884, payable 11 months after date for $1,900, 4th draft favor of Read & Co., dated January 30, 1884, payable December 15, 1884, for $2,497.68, 5th draft favor of E. Longnemare, dated February 21, 1884, payable December 30, 1884 for $3,098.94, 6th draft in favor of the Geo. W. Miles Co., dated January 12, 1884 payable 11 mos. after date for $1,900, 7th draft favor of Read & Co., dated January 10, 1884 payable December 18, 1884, for $2,772.80, 8th draft favor of the Geo. W. Miles Co., dated January 14, 1884, payable 11 months after date for $748.50, 9th draft favor of the Geo. W. Miles Co., dated November 20, 1883, payable 13 months after date for $2,744.50, 10th, fifteen hundred dollars on account of draft favor of E. Longnemare dated February 23, 1884, payable December 30, 1884, for $3,044.33, 11th balance due on draft favor of E. Longnemare, dated February 23, 1884 payable December 30, 1884, for $3,044.33, draft favor of Read & Co., dated January 30, 1884, payable December 23, 1884, for $2,500.89, draft favor of the Geo. W. Miles Co., dated November 30, 1883, payable 13 months after date for $2,744.50 in *pro rata* amounts until all of said three drafts shall be paid in full. Should there be a residue after paying all the drafts the same is to be paid into the Exchange National Bank of Norfolk, Va., for account of parties of first part.

Witness the following signatures and seals:

R. W. HYMAN. [SEAL.]
F. M. HYMAN. [SEAL.]
GEO. L. ARPS. [SEAL.]

273 IN THE CORPORATION OF THE CITY OF NORFOLK, *To wit:*

I, L. D. Starke, a notary public in and for the corporation aforesaid in the State of Virginia, do certify that R. W. Hyman, F. M. Hyman, and Geo. L. Arps, whose names are signed to the writing above, bearing date on the 16th day of June, in the year 1884, have acknowledged the same before me in my corporation aforesaid.

Given under my hand this 16th day of June, 1884.

L. D. STARKE,
Notary Public.

VIRGINIA,
Corporation of the City of Norfolk, } *To wit:*

Before me, the undersigned, notary public for the corporation of the city of Norfolk, in the State of Virginia, personally appeared W. W. Vicar, the trustee named in the annexed copy of an indenture dated the 16th day of June, 1884, from Hymans and Dancy and Dancy, Hyman & Co., and made oath that the same is a true copy of the indenture in his possession.

That he has acted as trustee thereunder and of the assets mentioned therein. He has collected the sum of $— and has applied

the same to the payment of the debts mentioned therein in the order secured thereby, and that of the sum of $8,350.00 which he has paid to the receiver of the Exchange National Bank of Norfolk, as testified by him in the foregoing depositions, $2,800.00, part thereof, was collected from the assets mentioned in said indenture.

And deponent further says that the amount to be further collected therefrom, if any, is, in his judgment, of *title* value.

W. W. VICAR.

Subscribed and sworn to before me this 28th day of February, 1888.

274 Witness my hand and official seal.

[SEAL.] PETER X. SMITH,
Notary Public.

The complainant on his part offered proofs showing that Robert W. Hyman died on or about the 15th day of May, 1885, intestate and leaving as his heirs-at-law the persons named in the original bill of complaint as amended as such heirs.

That Robert W. Hyman, Junior, the defendant herein, was, on or about the 30th day of June, 1885, duly appointed administrator of his estate by the probate court of Cook county; that he qualified as such and letters of administration were issued to him out of said court, which were in force at the time of said hearing. Complainant also offered the statutes of Virginia showing the rate of interest upon notes or instruments of writing for the payment of money to be six per cent. per annum when another rate is not specified in such note or instrument.

The defendants also offered and read in evidence the statement and stipulation as to deeds signed by counsel and filed in said cause:

Abner H. Davis to Henry A. Barling and Edward D. Mandell, as trustees under the last will and testament of Edward Mott Robinson, deceased, and Edward H. Green, as substituted trustee in the place and stead of said Abner H. Davis, resigned.	Doc. 358,817.

275 Deed dated Oct. 15, 1881, recorded November 14, 1881, in Book 1118 page 477. Recites that on or about September 20, 1878 first party commenced an action in the supreme court of the State of New York, in and for the city and county of New York, against Hetty Howland Robinson Green, *et al.* defendants in which he prays that he may be released and discharged from his position and duties as trustee under the will of said Edward Mott Robinson, deceased; that a decree was duly made in said suit on or about August 15, 1881, approving and accepting the resignation of said first party and appointing Edward H. Green in his place and stead as such trustee, that upon the completion of said Green's appointment as substitute trustee by the filing of an approved bond, the

said first party should release, assign, set over, grant and convey to second parties herein all the estate, real and personal belonging to the trust created by the will of said Robinson, that the appointment of said Green, was properly completed by filing said bond on October 7, 1881.

Therefore, first party conveys to said second parties the following-described real estate to wit, (here follows a description of premises not now in question). Also in further fulfillment of said decree of said court, releases, assigns, grants, sets over and conveys to said second party*s* as trustees, all right, title and interest in and to all and singular the mortgages, deeds of trust &c. mentioned in a schedule annexed hereto marked "A" (said schedule refers to premises other than those in question). Acknowledged Oct. 15, 1881.

276 John V. Le Moyne, trustee, to Robert W. Hyman. (Stamp, $10.00.)

Trustee's deed, dated April 26, 1864 and recorded May 5, 1864, in Book 274 page 498, sets forth the execution of the deed of trust from Johnson and wife to Le Moyne conveying the premises therein described to secure the bond for $4,500.00 and interest to Susan C. Williams recorded in Book 172, page 17, and the power of sale therein contained in substance.

And whereas default was made in the payment of the said sum of $4,500.00 at the time and in the manner mentioned in the condition of the said bond, and default was also made in the payment of semi-annual interest thereon which became due on the 16th day of February, 1864.

And whereas, by a decree of the circuit court of the United States for the northern district of Illinois, on the chancery side thereof made on the 12th March, 1864 in the suit now pending of Susan C. Williams and Jesse L. Williams *v.* J. V. Le Moyne and Richard B. Washington, executor of John A. Washington dec'd, whereby after setting forth said bond and deed of trust and the conveyance of said premises by Wm. F. Johnson and wife to said John A. Washington by deed recorded in Book 176 pg. 363, the death of John A. Washington and the executorship of said Richard B. Washington, it was by said court adjudged that there remained due said Susan C. Williams upon said bond $4,500.00 principal and $262.00 interest and the further decree of said court, that said Le Moyne had the power and that he should go on and execute the power vested in him, as such trustee as aforesaid and make sale of said premises for the purpose afore-
277 said without benefit of redemption, and that it was necessary to sell the whole of said premises, the interests in said trust deed being an undivided interest and that he should go on and sell said conveyed premises as aforesaid, at public vendue &c. &c.

And whereas in obedience to said decree and in pursuance of the trusts contained in said deed of trust, the said premises were by the said J. V. Le Moyne, he having first entered upon and taken possession thereof, duly advertised for sale in the Chicago Post, a daily news-

paper published in the city of Chicago, for 30 days previous to the day of sale, such notice of sale specifying that the said premises would be sold at public vendue to the highest bidder on the 26th day of April, 1864, at the north door of the court-house of Cook county in Chicago, Illinois, at the hour of 10 o'clock a. m., the first insertion of which notice in said newspaper was on the 18th March 1864 and thence continued daily in every publication of said newspaper until the day of sale.

And whereas, in pursuance of the said notice on the 26-h April, 1864, said premises were at the time and place aforesaid, duly exposed to sale at public vendue by the said J. V. Le Moyne, as trustee as aforesaid, when the said party of the second part bid for the said premises $9,700.00 and that being the highest sum bid therefor, the said premises were then and there by the said Le Moyne, struck off to said party of second part, and he was declared the purchaser thereof at that sum.

Therefore said party of first part as trustee as aforesaid and also in pursuance of said decretal order in consideration of the premises and of $9,700.00 to him in hand paid by party of second
278 part, receipt acknowledged, remises, releases, conveys and quitclaims all the estate, right, title and interest in law and equity which party of first part acquired by virtue of said deed of trust of in and to the undivided one-half ½ of section 21, T. 39 N., R. 13 E. of 3rd P. M. and all benefit and equity of redemption of the said William F. Johnson and Eliza Johnson, their heirs and assigns therein.

Joseph Peacock and Margaret, his wife, of Chicago, to Henry A. Barling and Abner H. Davis, of New York, executors of the last will and testament of Edward Mott Robinson, deceased.	Consid'n, $16,800.00. (Stamp, $17.00.)

Deed dated June 26, 1865, and recorded June 29, 1865, in Book 311, page 520.

Grant, bargain, and sell to said executors, their heirs and assigns and successors, an equal undivided one-half part of section 21, T. 39 N., R. 13 E., of 3rd P. M.

Deed contains covenant against acts of grantors done or suffered.

Robert W. Hyman to George R. H. Hughes.	(Stamp, $4.50.)

Trust deed dated April 26, 1864, and recorded June 7, 1864, in Book 283, page 181, to secure payment of $9,000.00 to Richard B. Washington, executor of John A. Washington, dec'd, conveys the undivided one-half of section 21 aforesaid.

279 George R. H. Hughes
to
Robert W. Hyman.

Release deed, dated Oct. 21, 1865, and recorded Dec. 27, 1865, in Book 315, page 576; consid'n, $1.00, &c.

Conveys all right, title, and interest acquired by the trust de-d last shown to the premises therein described (describing them).

[6c. stamp to certif. of ack'nt.]

Robert W. Hyman, of New York city, bachelor,
to
Edward Mott Robinson. (Stamp, $10.00.)

Warranty deed, June 10, 1864, and recorded July 15, 1864, in Book 290, page 28; consid'n, $6,000.00.

Conveys the undivided one-half of section 21 aforesaid, subject, however, to a certain deed of trust made by said Robert W. Hyman and delivered to George R. H. Hughes April 26, 1864, conveying said premises in trust for the payment of $9,000.00, as specified therein; covenants, &c., except as to said deed of trust.

STATE OF ILLINOIS, }
County of Cook. }

In Circuit Court. In Chancery.

WILLIAM H. PETERS, Rec'r,
vs.
ROBERT W. HYMAN, JR., *et al.*

It is agreed in the above cause that the foregoing abstracts of deeds relating to sect. 21, T. 39 N., R. 13 east, shall be ad-
280 mitted as evidence of the originals on the part of the defendants in said cause and be deemed as read in evidence at or before the decree therein and embodied in the certificate of evidence accordingly, at the instance of any party in said cause.

PADDOCK, ALDIS & WRIGHT,
Sol'rs for Def'ts Answering.
SMITH & PENCE, *Sol'rs for Compl'ts.*

Which was all the evidence offered on said hearing on the part of any of the parties to said cause.

Signed, sealed by—

LORIN C. COLLINS, JR., [SEAL.]
Judge of the Circuit Court.

And afterwards, to wit, on the 10th day of January, A. D. 1890, there was filed in said cause a certain master's report, which is in the words and figures following, to wit:

STATE OF ILLINOIS, }
Cook County, } *ss.*:

In the Circuit Court of Cook County.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Virginia,

vs.

ROBERT W. HYMAN, JR., as Administrator of the Estate of Robert W. Hyman, Deceased, and in Person, Francis M. Hyman, Mary Martha Pender, Walter R. Hyman, Henry H. Hyman, Duncan H. Hyman, Mary Hatton Hyman, Hezekiah Brown,
281 George E. Brown, Mary E. Norman, Sarah F. Chesson, Estelle Hunter, Kenneth Patton Hyman, Robert Francis Hyman, Victor Lee Hyman, Preston Eugene Hyman, Anna Minerva Hyman, James Patton Hyman, Ella D. Sherrod, Theodore B. Hyman, Lafayette Hyman, Elizabeth Hyman, John Hyman, William Hyman, Claude B. Hyman, Lela L. Bodie, Minette Sherrod, Henry A. Barling, Edward D. Mandell, and Edward H. Green, as Trustees under the Will of Edward Mott Robinson, Deceased; Hetty H. R. Green, and George L. Arps.

Report of Sale by George Bass, Master in Chancery.

To the honorable judge of the circuit court of Cook county:

In pursuance of a decree entered in the above-entitled cause on the ninth day of April, A. D. 1888, I, George Bass, one of the masters in chancery of said court, do now respectfully report that twenty days having elapsed after the date of said decree, and default having been made by the said defendants in the payment of the amount required to be paid by said decree within the time limited, I advertised the premises described in said decree for sale at public vendue between the hours of nine o'clock in the morning and the setting of the sun of the same day, and previously to said sale I advertised the time and place of holding said sale once in each week for eight successive weeks by causing a notice containing the title of said cause, the names of the parties thereto, the name of the court wherein said cause was pending, and describing said premises and stating that I would sell the same in pursuance of said decree on Saturday, the twenty-first day of December, A. D. 1889, at the hour of
282 eleven o'clock in the forenoon of that day, at east main entrance on Clark street of the court-house, in the city of Chicago, county of Cook and State of Illinois, at public vendue, to the highest and best bidder, for cash, to be published for eight successive weeks, to wit, eight times in the Chicago Daily Evening Journal, a newspaper printed and published every week day in the city of Chicago, county of Cook and State of Illinois, and of general circulation throughout said county and State. The date of the first paper containing said notice was the 31st day of October, A. D. 1889, and the date of the last paper containing said notice was the 19th day of December, A. D. 1889. A printed copy of this notice, together with

the certificate of publication thereto affixed, is hereto attached, marked Exhibit "A," and made part of this report.

Some days prior to the sale I consulted the solicitors of the various parties in this cause and it was thought desirable to have the premises, to wit, section twenty-one (21), township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian, surveyed, and a plat made to show the division of the premises into ten-acre tracts, and have the same printed for distribution. Accordingly I employed Greely & Carlson to survey the section and it was found that it contained six hundred and fifty-two and a half acres. They divided the same into ten-acre tracts, as shown on said plat, but owing to the section overrunning there is ten acres and a fraction of an acre in each tract. The plat was printed and distributed to any one desiring a copy of the same. A copy of said map or plat is filed herein and marked Exhibit "B;" owing to its size it is not attached to this report.

283 Said plat shows a division of the section into ten-acre tract and a fraction as aforesaid, and for the sake of convenience at the sale they are numbered, consecutively, from 1 to 64, inclusive, and on each ten-acre tract is printed the legal description, as well as the number before referred to. The expense of surveying and printing said plat is $190. I also employed, on the suggestion of counsel in the cause, a short-hand reporter to attend the sale, for which I incurred the expense of $6. I paid for advertising said sale the sum of $26.88, as shown by Exhibit "A."

On the 21st day of December, A. D. 1889, the day fixed for said sale according to the terms of said notice, and at the hour therein named, I attended at the place of sale mentioned in said notice, and before the sale I announced that in pursuance of the decree I would first offer the said section twenty-one in tracts of ten acres each, as shown by the maps or plats, said Exhibit "B," using the figures or numbers on the plat for convenience; then I would offer the section in tracts of 20, 40, or more acres as any one might request; that then I would offer the section as a whole; that no part of the section would be struck off to any one until all of the offers and bids had been made; that the terms of the decree required the party or parties to whom the section or any portion of it was struck off to deposit at that time twenty per cent. of the amount of the bid, and the remaining eighty per cent. of the bid to be paid upon the confirmation of the sale by the court and the delivery of the deed; that the sale was made subject to the taxes for the year 1889.

284 I then offered section twenty-one (21), township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian for sale as follows:

I first offered lot one, as shown upon said plat, and Mr. F. S. Allen bid therefor the sum of twelve thousand ($12,000) dollars, which was the highest and best bid made for said lot one.

I then offered lot two (2), and Mr. F. S. Allen bid therefor the sum of nine thousand five hundred ($9,500) dollars, and that was the highest bid offered for said lot two.

I next offered lot three (3), and there was no bid for the same.

I then offered lot four (4), and there was no bid for said lot four. I then offered lots five (5), six (6), and seven (7), consecutively, each being offered separately, and there was no bid for any of them. Then I offered lot eight (8), and Mr. Frank Nowak bid therefor the sum of eight thousand dollars ($8,000), which was the highest and best bid made for said lot eight. I then offered lots nine to sixty-three, inclusive, consecutively, each being offered separately, and there was no bid for any of those lots numbered from 9 to 63, inclusive.

I then offered lot sixty-four (64), and Mr. Frank Nowak bid therefor the sum of eight thousand ($8,000) dollars, which was the highest and best bid made on said lot sixty-four.

I then offered said section in tracts of twenty acres each, and there was no bid and no offer made for any tract containing
285 twenty acres. I then offered said section in tracts of forty acres each, and Mr. Jacob Weil bid for said lots 1, 2, 15, and 16, as shown upon said plat, the sum of forty thousand ($40,000) dollars, and that was the highest and best bid made for said lots 1, 2, 15, and 16. I then offered the remainder of the section in tracts of forty acres each, and there was no bid for any other tract of forty acres. I then offered the entire section in tracts of eighty acres each, and there was no bid for any tract containing eighty acres in said section.

I then offered said section in tracts containing less than one hundred and sixty (160) acres, and there was no bid for any tracts less than 160 acres except as before stated.

I then offered the northeast quarter of the section, and there was no bid for the said northeast quarter of the section. I then offered the southeast quarter of the section, and there was no bid — the *the* said southeast quarter of the section.

I then off*ree*d the northwest quarter of the section, and there was no bid therefor.

I then offered the southwest quarter of the section, and there was no bid therefor.

I then offered the east one-half of the section, and there was no bid therefor.

I then offered the west one-half of the section, and there was no bid therefor.

Then I offered the north half of the section, and received no bid for it.

286 Then I offered the south half of the section and received no bid for it. I then offered the whole section, and Mr. George M. Bogue offered and bid therefor the sum of six hundred and two thousand dollars ($602,000), which was the highest and best bid for said section as a whole, and the said George M. Bogue being the highest and best bidder for said section and giving me a certified check for the sum of one hundred and twenty thousand and four hundred dollars ($120,400), which is twenty per cent. of the total amount of his bid, and as the total amount bid for said section in tracts less than the whole was far less in amount than the sum of six hundred and two thousand ($602,000) dollars, therefore, the bid

of the said George M. Bogue of $602,000 being the highest and best bid I received for the whole section and more than $600,000 as aforesaid, I struck off and sold said section to said George M. Bogue for said sum of six hundred and two thousand —, and I have in my custody the sum of $120,400, which is twenty per cent. of the amount so bid, and the same was given me by the said George M. Bogue in compliance with said decree to apply on account of his said bid.

I respectfully ask that the amounts expended by me as aforesaid be allowed, and that the sum of twelve hundred and fifty dollars be allowed me for my services as master in making said sale.

Respectfully submitted.

Chicago, December 21st, A. D. 1889.

GEORGE BASS,
Master in Chancery of the Circuit Court of Cook County.

287 *Master's Sale.*

STATE OF ILLINOIS, } ss:
County of Cook, }

Circuit Court of Cook County. In Chancery.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Virginia,
vs.
ROBERT W. HYMAN, JR., as Administrator of the Estate of Robert W. Hyman, Deceased, and in Person; Francis M. Hyman, Mary Martha Pender, Walter R. Hyman, Henry H. Hyman, Duncan H. Hyman, Mary Hatton Hyman, Hezekiah Brown, George E. Brown, Mary E. Norman, Sarah F. Chesson, Estelle Hunter, Kenneth Patton Hyman, Robert Francis Hyman, Victor Lee Hyman, Preston Eugene Hyman, Anna Minerva Hyman, James Patton Hyman, Ella D. Sherrod, Theodore B. Hyman, Lafayette Hyman, Elizabeth Hyman, John Hyman, William Hyman, Claude B. Hyman, Lela L. Bodie, Minette Sherrod, Henry A. Barling, Edward D. Mandell, and Edward H. Green, as Trustees under the Will of Edward Mott Robinson, Deceased; Hettie H. R. Green, and George L. Arps. } Gen*r*eal No.,62375.

Public notice is hereby given that in pursuance of a decree made and entered by said court in the above-entitled cause on the ninth day of April, A. D. 1888, I, George Bass, master in chancery of the said circuit court of Cook county, will, on Saturday, the twenty-first day of December, 1889, at the hour of eleven o'clock in the forenoon, at the east main entrance, on Clark street, of the court-house, in the city of Chicago, county of Cook and State of Illinois,

sell at public auction to the highest and best bidder for cash all and singular the following-described premises and real estate in said decree mentioned, situate in the county of Cook and State of Illinois, or so much thereof as shall be sufficient to satisfy
288 said decree, to wit:

Section twenty-one (21), township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian. Sale absolute.

GEORGE BASS,
Master in Chancery of the Circuit Court of Cook County.

SMITH & PENCE,
Complainant's Solicitors.

This is to certify that the annexed notice was published in the Chicago Daily Evening Journal, a newspaper of general circulation printed and published in the city of Chicago, county of Cook and State of Illinois, eight times, being one time a week for eight successive weeks, the date of the first paper containing the same being the 31st day of October, 1889, having been published and issued on that day, and the date of the last paper containing the same being the 19th day of December, 1889, being published and issued on that day, and that I have received twenty-six $\frac{88}{100}$ dollars for publishing the same.

Dated Chicago, Dec. 20th, 1889.

JOHN R. WILSON, *Publisher.*

And afterwards, to wit, on the 10th and 15th days of January, the 17th day of February, and the 7th day of March, A. D. 1890, the following, among other, proceedings were had and entered of record in said court, to wit:

289 *Order of Jan'y* 10, '90.

WILLIAM H. PETERS, Receiver, etc., *vs.* ROBERT W. HYMAN, JR., *et al.* } 62375, 4680.

This day comes George Bass, Esq., one of the masters in chancery of this court, and files his report of sale in this cause. It is ordered that all parties objecting to said report be, and they hereby are, ruled to file their objections within five days from date.

Order of Jan'y 15, '90.

WM. H. PETERS, Rec'r, *vs.* ROBERT W. HYMAN, Adm'r, &c., *et al.* } 62375, 4680. Bill and Amended Bill.

The petition and affidavits of objectors to the confirmation of sale having been this day filed, it is ordered that complainants and purchaser file their answers and counter-affidavits on or before the 17th day of January instant and furnish copies thereof to counsel for objectors by that date.

It is further ordered that the hearing of such objectors be set for Friday morning, the 24th inst., at 10 o'clock, and it is stipulated by

the parties, complainant, purchaser, and objectors, in open court that upon such hearing complainant and purchaser will produce in court George M. Bogue and Willard T. Black that, subject to objection by complainant and purchaser to examining either of them, objectors may call them as witnesses and examine them to the extent which the court shall allow, it being understood that complainants
290 and purchaser shall not by this stipulation waive any right they may have to object to any testimony so offered for irrelevancy, immateriality, or incompetency.

Order, Feb'y 17, '90.

WILLIAM H. PETERS, Receiver, &c., *vs.* ROBERT W. HYMAN *et al.*	62375, 4680. Bill.

On motion, it is ordered that leave be, and it hereby is, granted to file amendments to the objections *nunc pro tunc* as of the 16th day of January, A. D. 1890.

Order, Feb'y 17, '90. *Entered Nunc Pro Tunc as of Feb'y* 11, '90.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Virginia, *vs.* ROBERT W. HYMAN, JR., as Administrator of the Estate of Robert W. Hyman, Deceased, and in Person; Francis M. Hyman, Mary Martha Pender, Walter R. Hyman, Henry H. Hyman, Duncan H. Hyman, Mary Hatton Hyman, Hezekiah Brown, George E. Brown, Mary E. Norman, Sarah F. Chesson, Estelle Hunter, Kenneth Patton Hyman, Robert Francis Hyman, Victor Lee Hyman, Preston Eugene Hyman, Anna Minerva Hyman, James Patton Hyman, Ella D. Sherrod, Theodore B. Hyman, Lafayette Hyman, Elizabeth Hyman, John Hyman, William Hyman, Claude
291 B. Hyman, Lela L. Bodie, Minnette Sherrod, Henry A. Barling, Edward D. Mandell, and Edward H. Green, as Trustees under the Will of Edward Mott Robinson, Deceased; Hetty H. R. Green and George L. Arps and Henry A. Barling, Executor; Henry A. Barling, Edward D. Mandell, Trustees; Robert W. Hyman, Jr., Administrator, as Objectors, and George M. Bogue, as Purchaser.	62375, 4680. Bill and Am'd Bill.

On reading the report of George Bass, one of the masters in chancery of this court, heretofore filed herein and the objections to the

confirmation of the sale so reported by the master and the *portion* praying that said sale be set aside, filed herein on behalf of Henry A. Barling, as executor under the last will and testament of Edward Mott Robinson, deceased; Henry A. Barling, Edward D. Mandell, Edward H. Green, as trustees under the will of said Robinson, and Robert W. Hyman, Jr., as administrator of the estate of Robert W. Hyman, deceased, by Paddock & Wright, their solicitors, said objections and petition being in writing, and on reading the affidavits filed herein in support of said objections and said petition and counter-affidavits filed on behalf of the complainant, as well as the exhibits attached to all such affidavits, and also the answer of the complainant and George M. Bogue to said objections and petition, and said Edward H. Green as trustee having withdrawn his appearance as an objector herein, after hearing Messrs. Paddock & Wright and Newton A. Partridge, of counsel for said Henry A. Barling as executor, said Henry A. Barling and Edward D. Mandell as trustees, and said Robert W. Hyman as administrator, and also George W. Smith, Abram M. Pence, and David B. Lyman, of counsel for the
292 complainant herein, William H. Peters, as receiver and said Bogue, and the court, being now fully advised in the premises, doth order, adjudge, and decree that the said report of the said master be, and the same is hereby, approved and confirmed, and the sale of the premises described in the decree entered herein on the 9th day of April, 1888, to George M. Bogue for the sum of six hundred and two thousand dollars ($602,000) is in all respects approved, ratified, and confirmed, and it appearing that twenty per cent. of said sum of money has been paid by said Bogue to the master, in accordance with the terms of said decree—

It is further ordered, adjudged, and decreed that upon the payment to said master by said Bogue of the remainder of the price bid by him for said premises, such remainder being four hundred and eighty-one thousand six hundred dollars ($481,600), such payment to be made before the expiration of twenty-five days from the date of the entry of this decretal order, said master shall execute and deliver to said Bogue a deed of said premises in conformity with the terms of said decree.

And it is further ordered by the court that the amounts asked to be allowed by the master in his said report for his charges and disbursements and expenses of sale be, and the same are hereby, allowed, and said master is authorized to retain the same from the moneys which have come or shall come into his hands, and also to pay out of such moneys any costs of this suit which may remain unpaid.

And the said master, upon delivering said deed and after
293 payment of the charges, disbursements, costs, and expenses as aforesaid, is directed to pay to the said Henry A. Barling, as executor as aforesaid, or to Paddock and Wright, his solicitors, out of such purchase-moneys, being the net proceeds of said sale, the sum of five hundred and five thousand four hundred and fourteen dollars and six cents ($505,414.06), with interest thereon from January first, 1888, to April 9th, 1888, at seven per cent. per annum,

and interest on the amount of such principal and interest from April 9th, 1888, to February 11th, 1890, the date of the entry of this decree, at the rate of six per cent. per annum; also to said Barling as such executor or his said solicitors the further sum of eight thousand and twenty-eight dollars and thirty-nine cents ($8,028.39), being for taxes paid under authority of this court since April 9th, 1888, with interest thereon, and that he pay to said Barling as executor or his said solicitors one-half of the remaining proceeds of such sale, and that he pay to the solicitors for the complainant the other one-half.

In case the purchaser at the sale under said decree shall fail to pay the unpaid part of said purchase-money so bid by him at said sale in full to said George Bass, master of this court, within the said time so fixed for the payment thereof, the said sale shall thereupon be set aside and a resale had of said premises upon terms to be settled by the court, with liberty to the parties to apply; and thereupon the said Henry A. Barling as such executor, said Barling and Mandell as trustees, and said Hyman as administrator as aforesaid jointly and severally pray an appeal to the supreme court of this State, and such appeal is allowed by the court as so prayed upon the filing of an appeal bond, conditioned, according to law, in the penal
294 sum of one hundred thousand dollars, to the said William H. Peters, receiver, and George M. Bogue, with surety to be approved by the court within twenty days from the entry of this decree, and twenty days is allowed for filing a certificate of evidence.

And this cause having been heard at the January term, 1890, of this court, and the parties complainant and defendant, purchaser and objectors, having by their respective solicitors agreed at such time in open court that such order or decree as this court should enter herein should be entered as of such terms and of the date of February 11th, 1890, it is accordingly ordered that this decree be entered and have effect, *nunc pro tunc*, as of the eleventh day of February, 1890.

Order of March 7, '90, Entered Nunc pro Tunc as of March 6, '90.

WILLIAM H. PETERS, Receiver of the Exchange National Bank of Norfolk, Virginia, *vs.* ROBERT W. HYMAN, JR., Administrator of the Estate of Robert W. Hyman, Deceased, *et al.*	62375, 4680.	Bill and Amended Bill.

It appearing to the court that the said objectors have sued out of the office of the clerk of the supreme court of Illinois a writ of error to reverse the decree confirming the sale in this cause, and that said Barling declines to receive the money to be paid to him by the master in accordance with the decree of distribution, that R. Snydam Grant, the assignee of George M. Bogue, the purchaser at said sale, has paid to the said master four hundred and eighty-one thousand six hundred ($481,600) dollars, being the balance of the pur-
295 chase price of said section twenty-one (21), and it further appearing to the court that said master has executed and delivered to said R. Snydam Grant a deed conveying said premises in

accordance with the decree of sale and the order confirming the same entered in this cause;

And it further appearing to the court that the New York Life Insurance Company of New York, a corporation organized and doing business under the laws of the State of New York, has made an actual loan to said R. Syndam Grant of the sum of three hundred and fifty thousand ($350,000) dollars, and that to secure the same the said R. Syndam Grant has executed and delivered to the said New York Life Insurance Company a mortgage on said section twenty-one (21), and that said mortgage is a valid and first lien on said section twenty-one (21), and it further appearing to the court that it has been expressly agreed by said Grant that in case said Barling and other plaintiffs in said writ of error should prevail on said writ of error and deed of said master to said Grant should be annulled by virtue of said writ of error, that then the said mortgagee, The New York Life Insurance Company of New York, should have a first lien on said fund paid into court by said Grant as the purchase price of said section twenty-one (21), and that the said fund shall in that event stand as the security of said mortgagee, The New York Life Insurance Company of New York, for the repayment of its said loan:

It is therefore ordered, adjudged, and decreed that in the event of the said master's deed being nullified by a decision of the supreme court reversing the decree of this court confirming said sale,
296 the said sum of six hundred and two thousand ($602,000) dollars deposited in this court as the purchase price of said section, less the sum allowed for master's charges and disbursements, shall stand and be held as security for the payment of the said mortgage held by the said New York Life Insurance Company.

It is further ordered that said master, George Bass, deposit said sum of six hundred and two thousand ($602,000) dollars, less the sum allowed for master's charges and disbursements, in the Metropolitan National bank, it being the intent of this order that it shall in nowise interfere with the order of distribution heretofore entered, and that the parties entitled thereunder to the moneys shall continue to have the right to call for and receive the same as therein directed to be paid.

STATE OF ILLINOIS, }
Cook County, } *ss*:

I, Henry Best, clerk of the circuit court of Cook county and the keeper of records and files thereof in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record in a certain cause lately pending in said court on the chancery side thereof between Peters, receiver, &c., complainants, and R. W. Hyman, Jr., adm'r, &c., defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 16th day
[SEAL.] of April, 1890.

HENRY BEST, *Clerk*.

(Endorsed:) Filed May 24, 1890. Wm. H. Bradley, clerk.

297 2. The report of Henry W. Bishop, Esq., master in chancery of this court, together with the deposition of George W. Smith, thereto attached, and the exhibits accompanying said report filed herein May 24, 1890; which is in the words and figures following, to wit:

298 In the Circuit Court of the United States for the Northern District of Illinois.

HETTY H. R. GREEN *et al.*
vs.
GEORGE M. BOGUE *et al.* } In Chancery.

Master's Report.

To the Honorable Walter Q. Gresham, judge:

I, Henry W. Bishop, master in chancery of said court, to whom by an order entered herein the above-entitled cause was referred for the purposes in said order expressed, respectfully report—

That I have been attended by the solicitors for the respective parties herein, at which time solicitor for the defendants produced before me for my examination a certified copy of the record in the case of William H. Peters, receiver, &c., *vs.* Robert W. Hyman, Jr., *et al.*, which is pending before the circuit court of Cook county, Illinois, and the testimony of George W. Smith was also taken, both of which are herewith reported; that I have examined said record and testimony in connection with the pleadings in this cause and I find and report that the matters set up in the plea of the defendant are established by the proofs and that said plea is true.

All of which is respectfully submitted.

HENRY W. BISHOP,
Master in Chancery of the Circuit Court of the United States for the Northern District of Illinois.

Dated Chicago, May 24, A. D. 1890.

299 In the Circuit Court of the United States for the Northern District of Illinois.

HETTIE H. R. GREEN *et al.*, Complainant-,
vs.
GEORGE M. BOGUE *et al.*, Defendants. } In Chancery.

Testimony Taken Before Henry W. Bishop, Master in Chancery of said Court, Monday, the Twenty-first Day of April, A. D. 1890.

Present: Geo. W. Smith, Esq., and David B. Lyman, of Lyman & Jackson, for defendants; Mr. Decker, of Bisbee, Ahrens & Decker, for complainants.

GEORGE W. SMITH, a witness on behalf of the defendants, being first duly sworn, deposes and says as follows:

300 APRIL 21, 1890—10 a. m.

Mr. SMITH: On the part of the defendants, who have filed a plea, we offer a copy of the record, certified by Henry Best, clerk of the circuit court of Cook county, under the seal of that court, in the case of William H. Peters, receiver, etc., *vs.* Robert W. Hyman, Jr., *et al.*

GEORGE W. SMITH, a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

I was one of the solicitors for the complainant in the suit of William H. Peters, receiver, against Robert W. Hyman, administrator, a copy of the record in which suit has been offered.

In that suit there were filed objections to the sale made by the master and the petition, the objections and petition being in one. There was also filed an amendment to such objections.

There was also filed the answer of Peters, receiver, and Bogue to such objections and petition. The originals of these papers were taken to the supreme court as a part of the certificate of evidence filed after the order confirming the sale made by the master in that suit and are now among the files of the circuit court of Cook county. I have copies of such objections and petition and amendment and the answer with the exception of the jurats filed.

These copies I now produce. The objections and petition were filed on the 15th day of January, 1890. The amendment to them
301 was filed on the 17th day of February, 1890, *nunc pro tunc* as of January 16th, and the answer was filed on the 17th day of January. The copy of the objections and petition is the same as that furnished to the firm of which I was a member—that is, the solicitors for the complainant—and filed by the solicitors for the objectors, being Paddock and Wright. The answer to the petition is a copy of the answer which was prepared by me and verified by Mr. Bogue and myself.

The amendment is a copy of the amendment which was offered and filed in accordance with the order of the court. I now offer the three papers to which I refer.

Mr. DECKER: Were not these papers the original papers made a part of the bill of exceptions and also a part of the record in that case?

A. Yes, sir; they were made a part of the certificate of evidence.

Q. Which was filed in that case?

A. Which was filed in that case.

Q. And that certificate you say is in the supreme court?

A. That certificate was taken under the new act—the amendment to the act to the supreme court. I have written to the clerk of the supreme court for certified copies, and if they are received I will be very glad to put them in in place of these.

Mr. DECKER: I object to these papers as not properly certified copies of the record.

GEO. W. SMITH.

Subscribed and sworn to before me this 21st day of April, A. D. 1890.

HENRY W. BISHOP,
Master in Ch'y.

302 In the Circuit Court of the United States for the Northern District of Illinois.

HETTY H. R. GREEN *et al.*
vs.
GEORGE M. BOGUE *et al.* } In Chancery.

And now come the complainants in the above-entitled cause, by Bisbee, Ahrens and Decker, their solicitors, and except to the report of the master, Henry W. Bishop, in this cause, and state the following as their exceptions thereto.

(1.) That the proofs taken before said master are insufficient to establish the truth of defendants' plea.

(2.) That it does not appear from anything in the record of the proceedings before said master that said plea is true.

BISBEE, AHRENS & DECKER,
Compl'ts' Sol'rs.

The within exceptions are overruled.

HENRY W. BISHOP,
Master in Ch'y.

May 24, 1890.

(Endorsed:) Filed May 24, 1890. Wm. H. Bradley, clerk.

303 Circuit Court, Cook County.

WILLIAM H. PETERS, Receiver,
vs.
ROBERT W. HYMAN, JR., *et al.*

The joint and several answer of William H. Peters, receiver, and George M. Bogue to the petition of Henry A. Barling, executor; Henry A. Barling, Edward D. Mandell, and Edward H. Green, trustees, and Robert W. Hyman, Jr., administrator, and their objections to the confirmation of the sale made by the master on the 21st day of December, 1889.

These respondents, saving all benefit of exception to the said petition and objections and praying the same benefit as if they had demurred thereto, answering, say—

That they aver and insist that the said Barling, as executor, or said Barling, Mandell, and Green, as trustees, have not such an interest in the subject-matter of the confirmation of such sale as to entitle them to appear and object thereto.

They also aver that said Hyman, administrator, has no real or substantial interest in such subject-matter; and, further answering, they deny that the said George M. Bogue was not a *bona fide* purchaser at said sale.

They also deny the allegations of said petition to the effect that the sum of $602,000 was not the entire purchase-money agreed to be paid for the premises so sold.

304 They also deny that prior to said sale a collusive and secret understanding was entered into or had between the said Bogue and said Peters, as receiver, to allow to the said receiver out of the actual purchase-money of said premises a further large sum on money sufficient to satisfy the claim of said receiver and interest up to the date of the sale or any other sum on money, but these respondents admit that an agreement in writing, a copy of which has been filed as an exhibit to one of the affidavits filed on the part of the objectors herein, and which agreement is referred to in said petition, was entered into between the said Peters, receiver, and the firm of Bogue & Hoyt, of which the respondent Bogue is a member, and they pray leave to refer to the original, which they will produce, for the particulars thereof, and they allege that said writing expresses the whole of the contract of the parties in that behalf.

And these respondents, further answering, deny that said agreement was in fact or intent in fraud of the express terms of the decree or in fraud of the objectors. They admit that the said agreement was not known to the said objectors until after the sale, but they deny that there was any obligation on the part of these respondents to disclose the same to them. They deny also that up to the time of and at said sale the said Bogue professed to the objectors to be an agent of said Peters, receiver, for the purpose of furthering the sale to the highest bidder; and they further deny that he was then or has been at any time heretofore under any duty or obligation to the said objectors or was bound to disclose to them any of his acts or doings in that behalf.

305 They admit that in bidding for said premises at such sale he was acting for and on behalf of persons engaged in the organization of a corporation to be known as the Grant locomotive works or under a similar name, but they deny that the said Peters was a party to such organization or had any interest or share therein.

They deny also that there was any agreement by which it was understood or agreed that said receiver should bid at such sale as if in competi-on with the said Bogue. They deny also that they or either of them have abused the process of this court or have been guilty of any fraud, collusion, deceit, or of any act by which the said objectors could have been or were mislead or deprived of the opportunity of bidding at the sale.

They deny also that said premises were sacrificed at said sale or sold for an inadequate price, and they aver that said objectors, not having offered to reimburse the respondent Bogue as purchaser for his outlays, attorneys' fees, and expenses, nor for interest thereon, and not having offered to pay any sum for said premises in case of resale, are speculators and not entitled to the consideration or courtesy of the court.

And these respondents, further answering, aver that the said Barling was, as respects said sale, placed upon more than equal

terms with the respondent Bogue and had an opportunity to bid at the same on more than equal terms, and for further answer these respondents refer to the affidavits filed herein on their behalf.

And they deny all the allegations of said petition not herein admitted, traversed, or denied and which are material, and
306 pray that said sale may be confirmed.

STATE OF ILLINOIS, } ss:
County of Cook, }

George M. Bogue, being duly sworn, says that he has read the foregoing answer and knows the contents thereof, and that the same is true except as to the matters therein stated on information and belief, and as to those matters he believes the same to be true.

—— ——.

Subscribed and sworn to before me this — day of January, A. D. 1889.

—— ——,
Notary Public.

STATE OF ILLINOIS, } ss:
County of Cook, }

George W. Smith, being duly sworn, says that he is the duly authorized attorney of William H. Peters with respect to all the matters of this suit; that said Peters is at Norfolk, Virginia, and absent from the State of Illinois; that deponent has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

—— ——.

Subscribed and sworn to before me this — day of January, A. D. 1889.

—— ——,
Notary Public.

(Endorsed:) Filed Jan. 17, 1890.

307 STATE OF ILLINOIS, } ss:
Cook County, }

In the Circuit Court of said County. In Chancery.

WILLIAM H. PETERS, Receiver, }
vs. }
ROBERT W. HYMAN, JR., *et al.* }

Objections to Confirmation of Sale and Petition of the Defendants Below Named.

To the honorable judges of said court, in chancery sitting:

And now come the undersigned, who are each defendants in the said cause, and jointly and severally object to the confirmation of the master's report of sale, filed herein on the 10th day of January,

1890, and jointly and severally move and petition the court to reject the bid of $602,000 of George M. Bogue therein mentioned and to disapprove and vacate the sale of section 21 of the town of Cicero therein reported as having been made to the said Bogue on the 21st day of December, 1889, and to order a resale of said premises in the above case in conformity with the decree of sale entered therein upon such terms as the court may appear proper and in accordance with the interests of the parties; and as the grounds of said motion and petition the undersigned respectfully show the court that the said George M. Bogue was not a *bona fide* purchaser under said decree, nor was the said sum of $602,000 the entire purchase-
308 money agreed to be paid by him for the premises so sold; that, on the contrary, the said Bogue, although publicly bidding the said sum of $602,000 as and for the entire purchase-money of said premises, made such bid under and in accordance with a collusive and secret understanding with said receiver, the complainant herein, to allow to the said receiver out of the actual purchase-money of said premises to be paid by said Bogue a further large sum of money sufficient to satisfy the claim of the said receiver and interest up to date of the sale, to wit, the sum of $91,921.92, which collusive agreement of the said Bogue with the said receiver the said Bogue and the said receiver will carry out upon the confirmation of the present sale, if the same should be confirmed, so that out of such purchase-money and in fraud of the express terms of the decree of sale and in fraud of the rights of the petitioners herein the said Bogue is to pay the said receiver his said claim in full and limit the amount to be received by the said Barling from said proceeds in excess of the account for advances and interest to one-half the difference between that account and the amount of said Bogue's bid, which one-half, after deducting one-half of $1,500 for the estimated costs, would equal only the sum of $12,465.79, it being the intent and purpose of the said Bogue and the said receiver in the agreement aforesaid to confine the share and interest of the said Barling and the said trustees in the proceeds of such sale to the amount publicly reported by the said master as the limit to the purchase-money to be paid by said Bogue, all of which agreements are fraudulent and contrary to equity and were knowingly and wilfully kept secret from the undersigned until after the said sale, so that they did not learn of the same until the day following.

309 And for that also the said Bogue, although at and up to the time of the said sale assuming and professing to the undersigned defendants to be an agent of the said receiver for the purpose of furthering a sale to the highest bidder under and in accordance with the decree of sale in said cause and undertaking such agency and assuming the duties thereof, was acting under a secret agreement with the Grant locomotive works (or the promoters of the organization of a corporation under the laws of the State of Illinois to bear that name, including said Bogue as one of such promoters), which agreement had also the consent and co-operation of the said receiver and was carefully kept from the knowledge of de-

fendants until after the master's sale aforesaid and was to the effect and substance that the said Bogue, while outwardly professing to the defendants to be the agent of the said receiver in and about the effecting of a sale of said premises under the decree, should secretly represent the said corporation or the promoters thereof hereinafter named or some of them as the bidders and purchasers of said property. It was further a part of said agreement that said receiver should also publicly bid at such master's sale as if in competition with the said Bogue, but in reality under prior agreement with the said Bogue, who should be allowed to purchase said premises at as small an advance above the minimum of $600,000 fixed by the decree as would suffice to secure the said land to the said Bogue and his associates and confederates; and it was further a part of said agreement between said Bogue, as such agent, and said receiver that the said receiver would not compete with the said Bogue at such sale, and that said Bogue should be allowed to purchase the said land without competition from said receiver and as cheaply
310 as he could from the said master and at a bid to be publicly announced and reported by said master to the court upon the condition that the said Bogue would pay to the said receiver the claim of the said receiver in full, with interest down to the date of said sale, which had been previously figured over between them and agreed upon at the sum of $91,921.92, which sum is to be paid in pursuance of said agreement, provided the parties thereto can induce this court to confirm said sale and authorize a conveyance of the said land to said Bogue.

And for that the said receiver has abused the process of this court and availed himself of the saleable value of said land under said decree and thereby has secretly sold said premises for a sum greatly in excess of the sum of $602,000 reported by said master, all which excess he and the said Bogue intend to divert to the purpose of paying said receiver's claim in full and so to avoid sharing the same with the persons entitled thereto under said decree as aforesaid.

And for that said premises have been sacrificed, according to the sale reported in said report, at the inadequate sum of $602,000, when the same were worth at least the sum of $800,000.00 or $850,000.00 or thereabouts and when the purchaser thereof is actually to pay, under this agreement aforesaid, the sum of $681,456.13 or thereabouts instead of the sum of $602,000.

And said defendants make said George M. Bogue and the complainant respondents to this petition, and also move the court for an order requiring said defendants to answer this petition, but not under oath, by a short day to be fixed by the court and referring the matter of defendants' objections to said sale and this petition to a master in chancery of this court to hear such proofs as may be submitted by said defendants and said complainants and
311 said Bogue under such order and direction as to the examination of witness and production of papers and documents as to the court may seem meet, but that such order include a direction to said Bogue and complainant to appear for examination and to produce before said master, for inspection of counsel of defend-

ants, all contracts, memoranda in writing, books, letters in the possession or control of them or either of them relating to or connected with the negotiation for section 21 or with the action of said George M. Bogue or H. B. Bogue, of the firm of Bogue & Hoyt, of which firm the said George M. Bogue is the senior partner, or the action or negotiation of said George M. Bogue or said firm of Bogue & Hoyt with said complainant, and that the said Bogue also produce before said master all letters, papers, and contracts in his possession and control relating to said negotiations and purchase, either with said complainant or any of the promoters of said corporation, especially with E. Y. Jeffery and W. T. Block, and that said master *may* due report to this court in that behalf, so that this motion may be heard by this court, upon the evidence to be orally taken, with all convenient speed, or that the court in its discretion set down the said matters and things before the court for hearing on oral evidence, and that all necessary orders may be entered from time to time by the court which the nature of the petitioner's case may require.

HENRY A. BARLING, *Exe'r;*
HENRY A. BARLING,
EDWARD D. MANDELL, AND
EDWARD H. GREEN, *Trustees, and*
ROBERT W. HYMAN, JR., *Adm'r,*
By PADDOCK & WRIGHT, *Sol'rs.*

312 STATE OF ILLINOIS, }
Cook County, } *ss:*

—— ——, being duly sworn, deposes and says that he is — of said above-named defendants and petitioners, and that he has read the above and foregoing petition, and that the matters and things therein set forth and stated are true, to the best of his knowledge, information, and belief.

—— ——.

Subscribed and sworn to before me this 15th day of January, A. D. 1890.

—— ——.

(Endorsed:) Filed Jan. 15, 1890.

313 And for that the said Peters, who, as receiver, was and is pledgee of the interest of the estate of Robert W. Hyman, deceased, had obtained, by an underbargain, full payment or means of payment and satisfaction of the claim held by him against the estate of said Hyman out of the purchase-money arising from the sale of said section 21, and by means of said underbargain and the pretended and collusive sale and assignment of said decree to the purchaser at said sale has prevented the said claim against said estate from being fully paid and satisfied, as in law and equity it ought to have been, and for that the said purchaser now holds outstanding as a claim against said estate an unsatisfied deficit or bal-

ance of $79.000 or thereabouts of said claim as against the estate of said Hyman.

And they base their objections and application for resale upon the affidavits filed herein and the matters therein stated and such other matters as may appear in evidence.

(Signed) PADDOCK & WRIGHT,
Solicitors for said Objectors and Each of Them.

(Endorsed:) Filed Feb. 17, 1890, *n. p. t.*, for Jan. 16, 1890.

314 The foregoing was all the evidence offered upon the hearing aforesaid.

And inasmuch as the matters above set forth do not fully appear of record in this suit, the said complainants tender this their certificate of evidence and pray that the same may be certified under the hand and seal of the judge of this court and thereby made a part of the record in such case, and it is certified accordingly this 10 day of Nov., A. D. 1890.

W. Q. GRESHAM. [SEAL.]

(Endorsed:) Filed Nov. 10, 1890. Wm. H. Bradley, clerk.

315 Afterwards, to wit, on the twenty-fifth day of November, 1890, there was filed in said clerk's office an appeal bond in said entitled cause; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, Hetty H. R. Green and Lewis H. Bisbee, are held and firmly bound unto George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, and Willard T. Block, Henry A. Barling and Edward D. Mandell, trustees, and William H. Peters, receiver of the Norfolk National Bank of Virginia, in the full and just sum of one thousand dollars, to be paid to the said George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, and Willard T. Block, Henry A. Barling and Edward D. Mandell, trustees, and William H. Peters, receiver of the Norfolk National Bank of Virginia, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 22nd day of November, in the year of our Lord one thousand eight hundred and ninety.

316 Whereas lately, at a regular term of the United States circuit court for the northern district of Illinois, in a suit depending in said court between Hetty H. R. Green and Edward H. Green, complainants, and George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, and Willard T. Block, Henry A. Barling and Edward D. Mandell, trustees, and William H. Peters, receiver of the Norfolk National Bank of Virginia, a decree was rendered against the said Hetty H. R. Green and Edward

H. Green, and the said Hetty H. R. Green *and the said Hetty H. R. Green* and Edward H. Green having prayed an appeal to the Supreme Court of the United States to reverse said decree:

Now, the condition of the above obligation is such that if the said Hetty H. R. Green and Edward H. Green shall prosecute their appeal to effect and answer all damages and costs if they fail to make their appeal good, then the above obligation to be void; else to remain in full force and virtue.

HETTY H. R. GREEN. [SEAL.]
LEWIS H. BISBEE. [SEAL.]

Approved by—

W. Q. GRESHAM.

(Endorsed:) Filed Nov. 25, 1890. Wm. H. Bradley, cl'k.

317 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division, }

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause wherein Hetty H. R. Green and Edward H. Green are complainants and George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, Abram M. Pence, and Willard T. Block, Henry A. Barling, Edward D. Mandell, trustees, and William H. Peters, receiver of the Norfolk National Bank of Virginia, are defendants, as the same appears from the records and files of said court now remaining in my custody and control.

Seal of Circuit Court U. S., Northern Dist. Illinois, 1855.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this thirteenth day of October, 1891.

WM. H. BRADLEY, *Clerk.*

318 UNITED STATES OF AMERICA, } ss:
Northern District of Illinois, Northern Division, }

To George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, Abram M. Pence, Willard T. Block, Henry A. Barling, Edward D. Mandell, and William H. Peters, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., on the twenty-third day of October, A. D. 1891, pursuant to a decree entered of record in the circuit court of the United States for the northern district of Illinois, wherein you are defendants and Hetty H. R. Green and Edward H. Green —, to show cause, if any there be, why the decree mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Walter Q. Gresham, judge, this 24 day of September, in the year of our Lord one thousand eight hundred and ninety-one.

WALTER Q. GRESHAM.

We hereby enter the appearance of George M. Bogue, Hamilton B. Bogue, George W. Smith, Willard T. Block, and William H. Peters in answer to above citation.

GEO. W. SMITH, *Solicitor.*

Sept. 25, '91.

[Endorsed:] Supreme Court of the United States. —— —— *vs.* —— ——. Citation to October term, A. D. 1891.

319 Circuit — of the United States for the Northern District of Illinois.

HETTY H. R. GREEN and EDWARD H. GREEN
vs.
GEORGE M. BOGUE *et al.*
} In Chancery.

Assignment of Errors.

The court erred in sustaining the plea of the appellees.
The court erred in not overruling the plea of the appellees.
The court erred in dismissing the bill.

L. H. BISBEE,
Att'y for Appellants.

Endorsed on cover: Case No. 14,904. N. Illinois C. C. U. S. Term No., 327. Hetty H. R. Green and Edward H. Green, appellants, *vs.* George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, *et al.* Filed October 20, 1891.

BRIEF OF APPELLANTS.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM A. D. 1894.

No. 927

HETTY H. R. GREEN and EDWARD H. GREEN,
Appellants,

vs.

GEORGE M. BOGUE, HENRY W. HOYT, HAMILTON B. BOGUE, ET AL.,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

L. H. BISBEE,
ATTORNEY FOR APPELLANTS.

(14,904.)

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1894.

No. 327.

HETTY H. R. GREEN AND EDWARD H. GREEN,
Appellants,

vs.

GEORGE M. BOGUE, HENRY W. HOYT,
HAMILTON B. BOGUE, ET AL.,
Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

STATEMENT OF FACTS.

Page of Record.

2 On the 15th day of February, 1890, Hetty H. R. Green and Edward H. Green, citizens of the State of Vermont, filed their bill in the United States Circuit court for the Northern district of Illinois, against George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, Abram M. Pence and Williard T. Block, all citizens of the State of Illinois, and Henry A. Barling and Edward D. Mandell, trustees, citizens of the city of New York, and William H. Peters, receiver of the Exchange National Bank of Norfolk, Virginia, a citizen of the State of Virginia.

The bill sets out that Hetty H. R. Green is the daughter of Edward Mott Robinson, late of the State of New York, now deceased, and that she is a beneficiary under

the last will and testament of the said Edward Mott Robinson, and that Edward H. Green is the husband of said
2 Hetty H. R. Green, and one of the trustees of the said will; that on or about the 20th day of June, 1864, one Robert W. Hyman, late of Chicago, Cook county, Illinois, now deceased, purchased for the joint account of himself and the said Edward Mott Robinson, an undivided one-half of section 21, township 39 north, range 13 east of the third principal meridian, in Cook county, Illinois, the money for which purchase was advanced by the said Edward Mott Robinson; and that on or about the said last mentioned date an agreement in writing was entered into
2 between the said Robert W. Hyman and the said Edward Mott Robinson, setting forth and defining the rights of said Hyman and said Robinson in respect of the said purchase as aforesaid. It is set forth in said agreement, which was executed on the 20th day of June, 1864, that Robert W.
3 Hyman had purchased the undivided half of said section 21 for the joint account of himself and Edward Mott Robinson, and was to pay therefor the sum of $15,000. That the said Edward Mott Robinson had advanced the payments made upon said half of section 21, and had taken the title to the land in himself, subject to certain deferred payments, and had obligated himself to pay the taxes upon the said property, and any further advances that it should become necessary or expedient to make.

It was further agreed that said Hyman should sell the said premises within one year from the date thereof, unless otherwise agreed between the parties thereto, and
3 should make no charge for buying, selling, or attending to the payment of taxes on the premises, and that upon such sale the proceeds should be distributed as follows:

"*First.* Said Robinson shall be reimbursed all

" moneys advanced and to be advanced on said premises " by him, with interest at the rate of seven per cent. per " annum.

" *Second.* The balance of the proceeds of such sale " shall be equally divided between the respective parties " hereto.

" *Third.* An account of sales and of proceeds shall " be made and rendered by said Hyman to said Robinson " within ten days after such sale is made, if made by " said Hyman.

" *Fourth.* And the said Robert W. Hyman for him- " self, his heirs, executors, administrators and assigns, " doth covenant and agree hereby to and with the said " Edward Mott Robinson, his heirs and assigns, that " whenever sale is made of said premises, that he, the " said Robinson, or his heirs, or assigns, shall, in any " event, be reimbursed the full amount of all advances " made and to be made on said lands with interest there- " on at the rate of seven per cent. per annum."

The bill further alleges that on the 14th day of June, 1865, Edward Mott Robinson died, leaving a last will and
4 testament, which was admitted to probate on the 30th day of June, 1865, before Gideon J. Tucker, Surrogate of the county of New York, in the State of N ew York.

By the terms of the said will (which it set out in full in said bill of complaint) there was devised to Hettie Howland Robinson, the only living child of the said Edward Mott Robinson, absolutely and in fee simple all the real estate situated in the city of San Francisco, Calforniia; also the sum of nine hundred and ten thousand dollars, to
4 be paid to her by the executors under the will, in six months from the decease of Edward Mott Robinson.

The will, after making certain other bequests to various parties, provides as follows:

"All the rest, residue and remainder of my estate, "both real and personal, remaining after the payment of
6 "my debts, after satisfying the bequests and dispositions "herebefore contained, I give, devise and bequeath "unto Henry A. Barling and Abner H. Davis, of the city "of New York, and Edward D. Mandell of New Bed- "ford, in the State of Massachusetts, as trustees, to be "had and holden by them, and the survivors or survivor
5 "of them upon the trusts following, that is to say, as to "the real estate, to collect and receive the rents, issues "and profits thereof, and as to the personal estate to in- "vest and keep invested the same, with power to call in "and change the investments from time to time; such "investments and re-investments to be in such securities "and property and in such manner as such trustees shall "deem safe and prudent, and to continue so to hold the "same in trust during the life of my said daughter, "Hetty Howland Robinson, and to apply the net rents, "issues, profits, interest, and income arising from the "property embraced in such trust, to the sole and sepa- "rate use of my said daughter, Hetty Howland Robin- "son, during her life, separate and apart from any hus- "band she may marry, and free from the debts, control, "or interference of any such husband, such application "to be of such income only from time to time as it shall "accrue and be received, and not to be subject to any "previous disposition or incumbrance by way of an- "ticipation, and upon the death of my said daugh- "ter, Hetty Howland Robinson, to convey, transfer,
6 "and deliver over the capital of such trust estate, real "and personal, as the same shall then exist, to the issue

" of my said daughter, Hetty Howland Robinson, if any
" issue she shall—her surviving, in such shares and propor-
" tions as my said daughter Hetty Howland Robinson
" shall appoint and direct by her last will and testament,
" and if she shall make no direction or appointment then
" to such issue in equal shares *per stirpes* and not *per*
" *capita*, and in case my said daughter, Hetty Howland
" Robinson, shall leave no issue her surviving then upon
" her death to convey, transfer and deliver over the cap-
" ital of such trust estate, real and personal, as the same
" shall then exist, excepting four hundred thousand dol-
" lars thereof hereinafter disposed of in such event to
" such person or persons, and for such estates as my said
" daughter, Hetty Howland Robinson, shall, by her last
" will and testament, direct or appoint, and in default of
" such direction or appointment, or so far as the same
" may not extend or be effectual, then to the person or
" persons who by the present laws of the State of New
" York would have taken the same as heirs-at-law and
" next of kin of my said daughter, Hetty Howland Rob-
" inson, if she had died seized and possessed thereor, in-
" testate; and as to the said above-reserved four hundred
" thousand dollars of such trust estate, I give and be-
" queath the same at the termination of the said trust
" upon such contingency of my said daughter dying with-
" out leaving issue, in manner following, that is to say:
" I give and bequeath one hundred thousand dollars to my
" brother, William A. Robinson, of Providence, Rhode
" Island, if he be then living, and if he be not living,
" then to the issue then living of said William A. Robin-
" son, in equal shares *per stirpes* and not *per capita*, and
" one hundred thousand dollars thereof to my sister, An-
" nie A. Chase, of Salem, Massachusetts, if she be then

" living, and if she be not then living, then to the issue
" then living of said Annie A. Chase in equal shares *per*
" *stirpes* and not *per capita*, and one hundred thousand
" dollars thereof to my brother, Attmore Robinson, of
" South Kingston, Rhode Island, if he be then living, and
" if he be not then living, then to the issue then living
" of said Attmore Robinson, in equal shares *per stirpes*
" and not *per capita*, and the remaining one hundred thou-
" sand dollars thereof, to my brother, Sylvester C. Robin-
" son, of Salem, Massachusetts, if he be then living, and
" if he be then not living, then to the issue then living,
" of said Sylvester C. Robinson, in equal shares *per*
" *stirpes* and not *per capita*.

" I give to the trustees of the trust above created and
6 " the survivors and survivor of them, power to lease any
" of the real estate embraced in such trust, for any law-
" ful term or terms, and likewise power to sell and con-
" vey any of such real estate. And I will and direct that
" as to such part of my estate as at the time of my death
" shall be invested in ships or interests in ships, it shall
" be at the option of said trustees, and likewise of my
" executors, in their discretion when to sell the same, and
" they may continue to hold and run any such ship or
" ships for the benefit and at the risk and charge of my
" estate for such time as to them may seem fit."

By the terms of the will, Henry A. Barling, Abner H. Davis and Edward D. Mandell were made executors and trustees, to administer the said estate.

On the 24th day of September, 1867, Robert W. Hyman purchased the remaining half of the said section 21,
7 township 39 north, range 13 east of the third principal meridian, in Cook county, Illinois, for the sum of $17,050, which amount was paid by Henry A. Barling and Abner

H. Davis as executors of the estate of Edward Mott Robinson, with the consent of Hetty H. R. Green, one of the complainants in this bill. This purchase was made, and the money paid, in pursuance and according to the provisions of a contract executed on the said 24th day of September, 1867, between Henry A. Barling and A. H. Davis, executors, and Robert W. Hyman, and the terms of the purchase were nearly identical with those of the former purchase of the first half of said section 21.

The property was bought by Robert W. Hyman for the joint account of himself and the estate of Edward Mott Robinson, and the money was advanced by the executors of the said estate.

The last two paragraphs of the said agreement are as follows: "It is further understood and agreed between
7 "the parties that in respect of both said parcels or undi-
"vided halves purchased as aforesaid, the executors or
"trustees under the last will and testament of Edward
"Mott Robinson have a right at any time, or from time
"to time, in their discretion, to sell the whole or any
"part or parts of said premises, for such price as they
"may deem expedient, and said Hyman shall be bound
"by the results of such sale.

"It is further agreed in respect of both said purchases,
"that if within one year from this date, there shall not
8 "have been enough received from sales of said premises
"to reimburse said Robinson's estate for his or its ad-
"vances, with interest, the executors in making up their
"eventual account for reimbursements of the estate for
"its advances and interest shall be entitled to state the
"account of advances computed with interest up to the
"end of a year from this date, the whole principal and
"interest drawing interest from that time, and so from

"that time forth state the account with annual rests add-
"ing in the accrued interest, provided always that in case
"of a loss instead of a profit accruing on the purchase,
"such annual rests shall not be made, but simple interest
"only for the whole time, without rests, shall be
"charged."

It is provided that in case of a sale being made at any time of section 21, that the executors of the estate of Edward Mott Robinson shall first be reimbursed the amount of all advances they have made, or shall make for or in respect of said purchase, with interest thereon at the rate of seven per cent. per annum.

From the 20th day of June, 1864, until the time of his
8 death, Edward Mott Robinson advanced all the money which had been paid on account of the purchase of said undivided half of said section 21, whether for taxes or assessments or improvements charged against the said property, and held the title to the same.

After his death, the other undivided half of said section was bought by the executors and trustees of his estate and all payments and advances of every kind were made by them, and the title taken in them as such trustees.

Robert W. Hyman, as a member of several firms doing business in the city of New York, and in Norfolk, Vir-
8 ginia, became indebted to the Exchange National Bank of Norfolk, Virginia, in a large sum of money, and in order to secure said bank, procured from the trustees and executors of the estate of Edward Mott Robinson a declaration of trust, and an agreement that they would hold the proceeds, to a certain amount, that might be derived from the sale of said lands, and deliver the same to the Exchange National Bank of Norfolk, Virginia, as security for said indebtedness.

The declaration of trust set forth that Abner H. Davis,
9 together with his co-executor held the title to six hundred and forty acres of land, being section twenty-one, town of Cicero, Cook County, State of Illinois, under and by virtue of certain agreements made by and between Edward Mott Robinson during his life-time and Mr. R. W. Hyman, and also between the executors of said Edward Mott Robinson and R. W. Hyman, and that upon the sale of the said property, the said R. W. Hyman was to receive one-half the net profits as provided by said agreements.

The said Abner H. Davis therein agreed to hold for the account of the said bank such a sum not exceeding $100,000, as might be found to be due to R. W. Hyman upon the sale of said section twenty-one.

By the said declaration of trust, the said Hyman intended to and did assign to the said Exchange National Bank of Norfolk, as security for his indebtedness to said bank, his interest in the trust arising from the purchase of section twenty-one.

On the 9th day of April, 1885, the Exchange National
9 Bank of Norfolk became insolvent, and under the direction of the comptroller of the currency of the United States, William H. Peters was appointed a receiver, and on the 13th day of April, 1885, took charge of the assets of the bank as such receiver.

On the 15th day of May, 1885, Robert W. Hyman
10 died intestate and Robert W. Hyman, Jr., was appointed administrator of his estate by the Probate court of Cook county, in the State of Illinois, and thereafter duly qualified.

During the year 1887 Abner H. Davis died and Edward

H. Green, one of the complainants in the said bill, was duly appointed a trustee in his place.

On the 29th day of August, 1887, the legal title of the said section twenty-one was held by the said Barling, Mandel & Green, as trustees, and the said Peters, as the receiver of the Exchange National Bank of Norfolk, held the assignment of the interest of the said Hyman in said section twenty-one by way of pledge as security for the debt of the bank against the estate of said Robert W. Hyman. On that day William H. Peters, as receiver for
10 the bank, filed his bill on the equity side of the Circuit court of Cook county, in the State of Illinois, setting forth the facts in relation to the purchase of said section twenty-one, and in reference to the trust under which the same was held by the said trustees, and in reference to the hypothecation by the said Hyman of his interest in the said trust, praying that the amount due to him, the said Peters, as such receiver, might be ascertained and the amount due the said trustee might be likewise ascertained, and that the said premises might be decreed to be sold and the proceeds of such sale distributed in accordance with the rights and equities of the parties.

On the 9th day of April, 1888, a decree was rendered, according to the prayer of the bill. It provided, among
10 other things, that the joint adventures entered upon in the lifetime of Robert W. Hyman and Edward Mott Robinson, as evidenced by the contracts of June 20, 1864, and September 24, 1867, be wound up and closed, and that section 21 aforesaid should be sold by George Bass, one of the masters of the Circuit court of Cook county, for the purpose of distributing the proceeds of the sale, in accordance with the findings made. It provided that any
11 of the parties to that suit should be permitted to bid and

become purchasers at said sale, and also provided that if said section should not sell for a sum equal to $600,000, the bill of complaint should be dismissed at complainant's cost.

From this decree the defendants appealed to the Supreme court of the State of Illinois, by which court the
11 decree was affirmed and the order affirming said decree was thereafter duly filed in the Circuit court of Cook county, and it was thereupon by said court ordered that said decree be executed, in pursuance of which order George Bass, one of the masters of said Circuit court sold said premises at public vendue, on the 21st day of December, 1889. The sale was made to George M. Bogue, Henry W. Hoyt and Samuel B. Bogue, who were doing business as real estate brokers in Chicago, under the firm name of Bogue & Hoyt, for the sum of six hundred and two thousand dollars ($602,000), which sale was confirmed by the Circuit court on the 15th day of February, 1890.

The bill in the case at bar charges that Bogue and
12 Hoyt had been for several months prior to said sale, in the employment of Peters, the receiver for the Exchange National Bank, endeavoring to negotiate a sale of said premises, and that in pursuance of such employment they began negotiations with one William T. Block, and procured from said Block an agreement to purchase said section 21, through the said Bogue and Hoyt, for a sum of money unknown to the complainant, but which sum is charged in the bill to be in excess of $760,912.26, and they, said Bogue and Hoyt, acting with the said Peters, secretly and unknown to the complainants, made and entered into an agreement in words and figures as follows:

"MEMORANDUM.

"William H. Peters, as receiver of the Exchange National Bank of Norfolk, Virginia, and Bogue and Hoyt, hereby agree, as follows:

"*First.* The said Peters, receiver, agrees to sell to Bogue & Hoyt, all right, title and interest, and claim which he now has in or to the decree entered on the 9th day of April, 1888, in the Circuit court of Cook county, in case No. 62,375, entitled: *William H. Peters, receiver, etc.*, v. *Robert W. Hyman, Jr., administrator, etc., et al.*, and which amounts to $83,426.35, with interest from the entry of said decree, no payment having been made thereon.

"*Second.* The said Bogue & Hoyt agree to pay to said Peters, receiver, therefor the sum of $83,426.35, with interest from the 9th of April, 1888, at the rate of six per cent. per annum, of which sum $2,000 have been paid and the receipt thereof is hereby acknowledged. The remainder is to be paid as soon as the sale to be made in pursuance of said decree shall have been confirmed by the Circuit court of Cook county.

"*Third.* It is understood that unless said Bogue & Hoyt, or a member or representative of said firm shall become the purchaser of section 21, township 39 north, range 13 east of the third principal meridian, at such sale, and the premises shall be struck off to them, and such sale afterwards confirmed by said court, this agreement shall not be binding upon either of the parties hereto, and the sum of money paid as aforesaid on account of said purchase shall be returned to said Bogue & Hoyt.

"*Fourth.* In order to secure said property, Bogue &

" Hoyt agree to bid up to the sum of $760,912.96, or so
" much as may be necessary to have the same struck off
" to said firm or its representatives, it being understood
" that said firm shall not be required to bid a larger sum
" in any event, than last mentioned sum.

" *Fifth.* It is understood that time shall be of the
" essence of this agreement, and that upon payment of
" the full sum to be paid to said Peters, receiver, he shall
" execute and deliver to said Bogue & Hoyt any instru-
" ment or instruments of writing which shall reasona-
" bly be devised or required for the purpose of giving
" effect to this agreement in carrying out the intent there-
" of.

" Witness the hands of said parties this 20th day of
" December, 1889.

(Signed) " WILLIAM H. PETERS,
" *Receiver of the Exchange National*
" *Bank, of Norfolk, Va.*
(Signed) " By SMITH & PENCE.
" BOGUE & HOYT."

The bill further alleges that the amount due the Robinson estate at the time of making the said sale under the provisions of the two contracts before mentioned, was
13 $575,568.42, and that the amount due Peters as receiver was $91,921.92, and that in order for section 21 to sell for an amount sufficient to allow Peters to receive the full value of his claim, namely: $91,921.92, it would be necessary for the property to sell for $759,412.26, which amount includes the amount due to the Robinson estate as advances, and an additional amount due the Robinson estate as profits equal, to the $91,921.92, which was due Peters as receiver as profits, and that the master's fee for making such sale amounted to $1,500, making a total of $760,-

912.26, which amount must be realized by a sale of said section 21 in order to allow the receiver to receive the face value of his claim from the proceeds of the sale.

The bill charges that because of the secret agreement
13 made on the 20th day of December, 1889, between Peters as receiver for the bank and Bogue and Hoyt, acting in fact for the Grant Locomotive Works, Peters consented that Bogue and Hoyt need not bid said premises higher than $602,000, provided they should pay to said Peters the sum of $91,921.92 the full face value of Peters claim, and as a result of such an agreement the premises were in fact bid off at the master's sale for the sum of $602,000.

13 The bill charges further that the sale was made in the interest of William T. Block, or for the parties whom he represented, and that there was fraudulent collusion between himself and George M. Bogue, Henry W. Hoyt and Hamilton B. Bogue, to secret from Hetty H. R. Green, and from the trustees of the estate of Edward Mott Robinson, the fact that any sum in addition to the amount actually bid at the sale was paid on account of the purchase of said property.

It charges also that at the time of the sale the secret agreement before mentioned was unknown to the com-
13 plainants in this bill, and that the sum of $91,921.92, which by the terms of the said agreement of December 20, 1889, was to have been paid by Bogue and Hoyt to Peters as receiver, has been actually paid in addition to the $602,000, and that the said sum is now in the hands of the said Peters, or in the hands of George W. Smith and Abram Pence, their solicitors, or in the hands of some one ready to be paid to said Peters, and that this additional sum of $91,921.92 is a part of the consideration

money of said sale, over and above the amount of $602,000, which was actually bid at said sale, and that this additional amount ought to be divided equally between the said Peters and the said Robinson estate as profits under the provisions of the contracts of June 20, 1864, and September 24, 1867, and that in whosever hands the said money now is, these parties should be charged with a trust for one-half of the same in favor of the trustees of the Edward Mott Robinson estate.

The bill prays that the defendants may make discovery
14 as to all contracts, agreements, arrangements and understandings between them, or any two of them in regard to the purchase of said premises, whether at the master's sale, or with reference to the final adjustment with said Peters, and that the $91,921.92 may be decreed to be held in trust to the extent of one-half thereof, for the benefit of the trustees representing the estate of Edward Mott Robinson and Hetty H. R. Green as *cestui que trust*;
15 and further that such of the defendants as may have the said $91,921.92 in their possession or under their control may be decreed to account for one-half thereof, and to pay the same over to the trustees of the estate of Edward Mott Robinson for the benefit of Hetty H. R. Green as *cestui que trust*.

On April 3, 1890, the defendants filed a plea in this
17 cause, in which they set forth that the suit mentioned in the bill of complaint as having been brought by said Peters as receiver for the Exchange National Bank of Norfolk, Virginia, in the Circuit Court of Cook County, was a bar to the proceeding as prayed for in complainant's bill. The plea alleged that Hetty H. R. Green, Henry A. Barling, Edward D. Mandell and Edward H. Green, with others, were parties defendant in said suit,

and that Hetty H. R. Green and Edward H. Green appeared by counsel and filed their answer in said Circuit Court of Cook County, to said bill, and that the said Mandell and Barling also appeared by counsel and filed their said answer; that said cause was heard in due course by said Circuit Court of Cook County, and on the 9th
17 day of April, 1888, a decree was entered therein; that from said decree the complainants in this bill, together with said Barling and Mandell, prayed an appeal to the Appellate Court of the State of Illinois, for the First District, which was allowed, and that upon a hearing, the
18 Appellate court affirmed the decree of the Circuit court in said cause. That the appeal was then taken to the Supreme Court of the State of Illinois, and that upon a hearing in said court the decree of the Appellate court was likewise affirmed. That afterwards, in compliance
18 with the decree so entered, the Circuit court, on the 9th day of April, 1888, through one of its masters in chancery, George Bass, sold the premises known as section 21 as aforesaid, for the sum of $602,000. That the said Bass did, on the 10th day of January, 1890, file his report of such sale in the Circuit Court of Cook County, and gave notice to all the parties in interest to file their objections within five days from that date; that on the 15th day of January, 1890, the said Barling, Mandell and Edward H. Green as trustees, together with Robert W. Hyman, Jr., as administrator, filed objections to said report and a petition praying that said sale should be set aside; in and by said objec-
18 tions and petition it was among other things alleged that said George M. Bogue was not the real or *bona fide* purchaser under said decree, nor was the sum of $602,000 the entire purchase money agreed to be paid for

the premises so sold. That, on the contrary, the said Bogue, although publicly bidding the said sum of $602,000 as and for the entire purchase money of said premises, made such bid under and in accordance with a secret and collusive understanding with said Peters as such receiver, to allow said receiver out of the actual purchase money of said premises to be paid by said Bogue a further sum of money sufficient to satisfy the claim of said receiver, and interest up to date of the sale, to wit: the sum of $91,921.92, and that the said receiver had abused the process of the court and availed himself of the salable value of said land in said decree and secretly sold the same for a sum greatly in excess of the sum of $602,000, reported by said master.

The plea further sets out that on the 17th day of January, 1890, Peters, as receiver, and Bogue filed their answers in said Circuit court to the objections and the petition of the objectors. The answer denied all fraud and conspiracy of said objectors, and alleged that said objectors had not offered to bid any sum upon a resale of the property.

The plea further alleges that affidavits in support of the objections and petition, in which the memorandum of December 20, 1889, was set out, and affidavits in support of said answer of said Peters and Bogue were duly filed in the Circuit court of Cook county, and that a hearing was had upon the objections and petition, at which hearing the affidavits were read, and that on the 17th day of February, after a full hearing, the court entered a decretal order, which provided, among other things, that upon reading the report of George Bass, one of the masters in chancery of this court, and the objections to the confirmation of the sales so reported by said master, and the petition

praying that the sale be set aside, filed herein, said petition being in writing, and on reading the affidavits filed herein in support of said objections, and said petition and counter affidavits filed on behalf of the complainant, as well as the exhibits attached to all affidavits, and also the answer of the complainant and George M. Bogue to the said objections and petition, and said Edward H. Green as trustee having withdrawn his appearance as objector herein, and the court being fully advised in the premises, doth order, adjudge and decree that the said report of the said master be and the same is hereby approved and confirmed, and the sale of the premises described in the decree entered herein on the 9th day of April, 1888, for the sum of $602,000, is in all respects, approved, ratified and confirmed.

The plea alleges that from this decretal order Henry A. Barling as executor and Barling and Mandell as trustees and Hyman as administrator, jointly and severally, pray an appeal to the Supreme court of the State of Illinois, and that in March, 1890, the case was argued be-
20 fore the Supreme court and taken under advisement, and is now pending therein, and that Bogue has already paid to the said Bass the amount necessary to be advanced upon the sale of the said property, and Bass has excuted and delivered to one Grant, the assignee of said Bogue, a deed for the said premises.

The plea further sets out that the Circuit court of Cook county acquired and had jurisdiction of the subject-mat-
21 ter of the suit which was pending before it and to the parties thereto, and that the complainants in this bill were among the parties in said suit, and that the said Hetty H. R. Green in respect to the issues sought to be raised in this suit being a party to said suit in the Circuit court of

Cook county, is bound by the orders and decrees of that court; that the subject-matter of this suit has already been determined and adjudicated by the said Circurt court of Cook county, and this court has no jurisdiction thereof, by virtue of which the defendants plead the same as a bar to complainant's bill of complaint in this cause.

The plea denies the charges of fraud and combination and alleges that no fraudulent or secret verbal stipulation
21 was entered into between Peters and Bogue and Hoyt, after the making of the memorandum of December 20, 1889, in relation to the payment by Bogue and Hoyt to Peters of the sum of $91,922.92, or any part of said sum. It also denies that in pursuance of such agreement or arrangement the premises were bid off by Bogue and Hoyt, for the sum of $602,000; or that the further sum of $91,921.92 was paid for said premises. It denies all collusion between the defendants in relation to said sale, and also denies that Bogue paid to Peters the sum of $91,921.92, or any sum whatever, or is to pay any such sum to Peters by virtue of such sale, or that such a sum is in the hands of any of the defendants in this suit for such purpose.

On the 11th day of April, 1890, argument of counsel was had upon the said plea of the defendants before the Honorable Walter Q. Gresham, one of the judges of the United States Circuit court, for the Northern District of Illinois, and after a hearing thereon the plea was referred
24 to Henry W. Bishop, master in chancery, to take proof thereon, who reported the same to be true, and upon the 11th day of October, 1890, a decree was entered before Hon. Henry W. Blodgett, United States district judge, in pursuance to the master's report, finding that the defend-
24 ant's plea was true, and dismissing complainant's bill,

from which decree the complainant prayed an appeal to the Supreme court of the United States, which was allowed.

The plea in the case at bar is based wholly upon the proceedings had in the case of *William H. Peters, receiver, etc.*, v. *Robert W. Hyman, Jr., et al.*, which was tried in the Circuit court of Cook County, State of Illinois, and from there appealed to the Supreme Court of the State of Illinois, in which court the appeal was pending at the time the plea in this case was filed.

In order then to present the exact questions raised in the case at bar by the plea of the defendants, it will be necessary to review not only the findings and the report of the master in the case of *Peters, receiver*, v. *Hyman, Jr., et al.*, but the objections filed by the defendants to the confirmation of the master's report and the final decree of the Circuit court, rendered after a hearing had upon the objections filed.

On the 10th day of January, 1890, George Bass, one of the masters in chancery of the Circuit court, in pur-
159 suance to the decree entered in the case of *Peters, receiver*, v. *Hyman, Jr., et al.*, on the 9th day of April, 1888, filed his report in the Circuit court of Cook county, in which he set out that he had advertised the premises known as section 21, aforesaid, as described in the former decree of sale, to be sold on the 21st day of Decem-
160 ber, 1889, at the east main entrance of the court house in the city of Chicago, County of Cook and State of Illinois, to the highest and best bidder for cash. That he, the said George Bass, as master, first offered to sell said section in tracts of twenty, forty or more acres, as might be desired, and not finding a bidder, then offered in both larger and smaller tracts, but with no greater success, where-

upon the whole section was offered, and the sum of $602,000 was bid therefor by Geo. M. Bogue, which was
161 the highest and best bid for said section as a whole, and the premises were accordingly struck off and sold to the said George M. Bogue for the sum of $602,000.

On the 15th day of January, 1890, the following peti-
172 tion with objections was filed in the Circuit court:

"*To the Honorable Judges of said court in chancery sitting:*

"And now comes the undersigned, who are each de-
" fendants in the said cause, and jointly and severall
" object to the confirmation of the master's report of sale,
" filed herein on the 10th day of January, 1890, and
" jointly and severally move and petition the court to re-
" ject the bid of $602,000 of George M. Bogue therein
" mentioned, and disapprove and vacate the sale of sec-
" tion twenty-one, of the town of Cicero therein reported
" as having been made to the said Bogue on the 21st day
" of December, 1889, and to order a resale of said prem-
173 " ises in the above case in conformity with the decree of
" sale entered therein, upon such terms as the court may
" appear proper and in accordance with the interests of
" the parties; and as the ground of said motion and peti-
" tion the undersigned respectfully shows the court that
" the said George M. Bogue was not a *bona fide* pur-
" chaser of the said decree, nor was the said sum of
" $602,000 the entire purchase money agreed to be paid
" by him for the premises so sold; that, on the contrary,
" the said Bogue, although publicly bidding the said sum
" of $602,000 as and for the entire purchase money of
" said premises, made such bid under and in accordance
" with a collusive and correct understanding with said re-

" ceiver, in compliance herein, to allow the said receiver
" out of the actual purchase money of said premises to
" be paid by said Bogue, a further large sum of money
" sufficient to satisfy the claim of said receiver, and inter-
" est up to date of the sale, to wit: the sum of $91,-
173 " 921.92, which collusive agreement of the said
" Bogue with the said receiver the said Bogue
" and the said receiver will carry out upon
" the combination of the present sale, if the
" same should be confirmed, so that out of such purchaes
" money and in fraud of the express terms of the decree
" of sale, and in fraud of the rights of the petitioner herein,
" the said Bogue is to pay the said receiver his said claim
" in full, and limit the amount to be received by said
" Barling from said proceeds in excess of the account for
" advances and interest to one half the difference between
" that amount and the amount of said Bogue's bid, which
" one-half after deducting one-half of $1,500 for the esti-
" mated cost, would equal only the sum of $12,465 79, it
" being the intent and purpose of said the Bogue and said
" receiver and the agreement aforesaid, to confine the
" share and interest of the said Barling and the said
" trustees in the proceeds of such sale to the amount pub-
" licly reported by the said master as the limit to the pur-
" chase money to be paid by said Bogue, all of which
" agreements are fraudulent and contrary to equity, and
" were knowingly and wilfully kept secret from the under-
" signed until after the said sale, so that they did not
" learn of the same until the day following.

" And for that also the said Bogue, although at and
" up to the time of the said sale assuming and professing
173 " to the undersigned defendants to be an agent of the said
" receiver for the purpose of furthering a sale to the

" highest bidder, under and in accordance with the decree
" of sale in said cause, and undertaking such agency and
" assuming the duties thereof, was acting under a secret
" agreement with the Grant Locomotive Works (or the
" promoters of the organization of a corporation under
" the laws of the State of Illinois to bear that name, in-
" cluding said Bogue as one of such promoters), which
" agreement had also the consent and co-operation of the
" said receiver, and was carefully kept from the knowl-
" edge of defendants until after the master's sale afore-
" said, and was to the effect and substance that the said
" Bogue, while outwardly professing to the defendants to
" be the agent of the said receiver in and about the ef-
" fecting of a sale of said premises under the decree,
" should secretly represent the said corporation or the
" promoters thereof hereinafter named, or some of them,
" as the bidders and purchasers of said property. It was
" further a part of said agreement that said receiver
" should also publicly bid at such master's sale as if in
" competition with the said Bogue, but in reality under
174 " prior agreement with the said Bogue, who should be
" allowed to purchase said premises at as small an ad-
" vance about the minimum of $600,000, fixed by the de-
" cree, as would suffice to secure the said land to the said
" Bogue and his associates and confederates; and it was
" further a part of said agreement between said Bogue,
" as such agent, and said receiver, that the said receiver
" would not compete with the said Bogue at such sale,
" and that said Bogue should be allowed to purchase the
" said land without competition from said receiver, and
" as cheaply as he could from the said master, and at a
" bid to be publicly announced and reported by said mas-
" ter to the court, upon the condition that the said Bogue

" would pay to the said receiver the claim of the said re-
" ceiver in full, with interest down to the date of said
174 " sale, which had been previously figured over between
" them and agreed upon at the sum of $91,921.92,
" which sum is to be paid in pursuance of said agree-
" ment, provided the parties thereto can induce this court
" to confirm said sale and authorize a conveyance of the
" said land to said Bogue.

" And for that the said receiver has abused the process
" of this court and availed himself of the salable value
" of said land under said decree, and thereby has secretly
" sold said premises for a sum greatly in excess of the
" sum of $602,000, reported by said master, all which
" excess he and the said Bogue intend to divert to the
" purpose of paying said receiver's claim in full, and so
" to avoid sharing the same with the persons entitled
" thereto under said decree as aforesaid.

" And for that said premises have been sacrificed, ac-
" cording to the sale reported in said report, at the inade-
" quate sum of $602,000, when the same were worth at
" least the sum of $800,000, or $850,000, or thereabouts,
" and when the purchaser thereof is actually to pay,
" under this agreement aforesaid, the sum of $681,-
" 456.13, or thereabouts, instead of the sum of $602,-
" 000.

" And said defendants make said George M. Bogue and
" the complainant respondents to this petition, and also
" move the court for an order requiring said defendants
" to answer this petition, but not under oath, by a short
174 " day to be fixed by the court, and referring the matter
" of defendants' objections to said sale and this petition
" to a master in chancery of this court to hear such proofs
" as may be submitted by said defendants and said com-

" plainants and said Bogue under such order and direc-
" tion as to the examination of witness and production of
" papers and documents as to the court may seem meet,
" but that such order include a direction to said Bogue
" and complainant to appear for examination and to pro-
" duce before said master, for inspection of counsel of
" defendants, all contracts, memoranda in writing, books,
" letters in the possession or control of them, or either of
" them, relating to or connected with the negotiation for
" section 21, or with the action of said George M. Bogue
" or H. B. Bogue, of the firm of Bogue & Hoyt, of which
" firm the said George M. Bogue is the senior partner,
" or the action or negotiation of said George M. Bogue,
" or said firm of Bogue & Hoyt with said complainant,
175 " and that the said Bogue also produce before said master
" all letters, papers and contracts in his possession and
" control relating to said negotiations and purchase, either
" with said complainant or any of the promoters
" of said corporation, especially with E. Y. Jeffery
" and W. T. Block, and that said master may
" due report to this court in that behalf, so that
" this motion may be heard by this court upon the
" evidence to be orally taken, with all convenient speed,
" or that the court, in its discretion, set down the said
175 " matters and things before the court for hearing on oral
" evidence, and that all necessary orders may be entered
" from time to time by the court, which the nature of the
" petitioner's case may require.

" HENRY A. BARLING, *Exe'r;*
" HENRY A. BARLING,
" EDWARD D. MANDELL, and
" EDWARD H. GREEN, *Trustees*, and
" ROBERT W. HYMAN JR., *Adm'r*,
" By PADDOCK & WRIGHT, *Sol'rs.*"

On January 17, 1890, the answer of the complainant and George M. Bogue was filed to the petition and ob-
170 jections of the defendants. The answer avers, first, that Barling, as executor, and Barling, Mandel and Green, as trustees, did not have such an interest in the subject-matter of the sale as to entitle them to object thereto, and that Hyman as administrator had no real or substantial interest in the subject-matter of the suit. It denied that George M. Bogue was not a *bona fide* purchaser at said sale; denies that $602,000 was not the whole of the purchase money agreed to be paid for the premises; denies that prior to the sale a collusive understanding was entered into between Bogue and Peters to allow Peters, out of the purchase money of the premises, a further large sum of money, sufficient to satisfy the claim of the receiver and interest up to the date of the sale, or any other sum of money. The answer admits that an agreement in writing, a copy of which has been filed as an exhibit to one of the affidavits filed by the objectors, has been entered into between Peters, the receiver, and the firm of Bogue & Hoyt, but avers that the said writing expressed the whole of the contract between the parties in that be-
171 half. It denies that said agreement was in fact or in intent in fraud of the expressed terms of the decree, or in fraud of the objectors. It admits that said agreement was not known to said objectors until after the sale, but denies that there was any obligation on the part of the receiver or of Bogue & Hoyt to disclose the same to them. It denies that up to the time of the sale Bogue professed to the objectors to be an agent of Peters, for the purpose of furthering a sale to the highest bidder, and denies that Bogue had at any time been under any duty or obligation to the objectors, or was bound to dis-

close to them any of his acts or doings in relation to the sale. It admits that Bogue when bidding for said premises was acting for and on behalf of persons engaged in
171 the organization of a corporation to be known as the Grant Locomotive Works, but denies that Peters was a party to such organization, or had any interest in it. It denies that there was any agreements by which it was understood or agreed that Peters as receiver should bid at such sale as if in competition with Bogue; denies that Peters and Bogue have abused the process of the court or been guilty of fraud, collusion or deceit in any of their
171 acts in relation to the sale, which could have misled the objectors or deprived any one of the opportunity of bidding at the sale. It denies that the said premises were sold for an inadequate price, and avers that the objectors, not having offered to reimburse Bogue as purchaser for his outlays, attorney's fees and expenses, and for interest
171 thereon, and not having offered to pay any sum for said premises in case of resale, are speculators and not entitled to the consideration of the court. It avers that Barling, in respect to said sale, was placed upon more than equal terms with Bogue and had an opportunity to bid at the same on more than equal terms. It further denies all of the allegations of the objectors' petition not expressly ad-
172 mitted, and prays that the sale may be confirmed.

The final decree entered on the 11th day of February, 1890, is as follows:

On reading the report of George Bass, one of the mas-
164 ters in chancery of this court, heretofore filed herein, and the objections to the confirmation of the sale so reported by the master, and the portion praying that said sale be set aside, filed herein on behalf of Henry A. Barling, as
165 executor under the last will and testament of Edward

Mott Robinson, deceased; Henry A. Barling, Edward D. Mandell, Edward H. Green, as trustees under the will of said Robinson, and Robert W. Hyman, Jr., as administrator of the estate of Robert W. Hyman, deceased, by Paddock & Wright, their solicitors, said objections and petition being in writing, and on reading the affidavits filed herein, in support of said objections, and said petition, and counter-affidavits filed on behalf of the complainant, as well as the exhibits attached to all such affidavits, and also the answer of the complainant and George M. Bogue to said objections and petition, and said Edward H. Green as trustee, having withdrawn his appearance as an objector herein, after hearing Messrs. Paddock & Wright, and Newton A. Partridge, of counsel for said Henry A. Barling as executor, said Henry A. Barling and Edward D. Mandell as trustees, and said Robert W. Hyman as administrator, and also George W. Smith, Abram M. Pence, and David B. Lyman, of counsel for the complainant herein, William H. Peters, as receiver, and said Bogue, and the court, being now fully advised in the premises, doth order, adjudge and decree that the
165 said report of the said master be, and the same is hereby approved and confirmed, and the sale of the premises described in the decree, entered herein on the 9th day of April, 1888, to George M. Bogue, for the sum of six hundred and two thousand dollars ($602,000), is in all respects approved, ratified and confirmed, and it appearing that twenty per cent. of said sum of money has been paid by said Bogue, to the master, in accordance with the terms of said decree.

It is further ordered, adjudged and decreed, that upon the payment to said master by said Bogue of the remain-
165 der of the price bid by him for said premises, such remainder being four hundred and eighty-one thousand six hundred dollars ($481,600), such payment to be made

before the expiration of twenty-five days from the date of the entry of this decretal order, said master shall execute and deliver to said Bogue a deed of said premises in conformity with the terms of said decree.

And it is further ordered by the court that the amounts asked to be allowed by the master in said report for his charges and disbursements and expenses of sale be, and the same are hereby allowed, and said master is authorized to retain the same from the moneys which have come, or shall come into his hands, and also to pay out of such moneys any costs of this suit which may remain unpaid.

165 And the said master, upon delivering said deed, and after payment of the charges, disbursements, costs and expenses as aforesaid, is directed to pay to the said Henry A. Barling, as executor as aforesaid, or to Paddock & Wright, his solicitors, out of such purchase moneys, being the net proceeds of said sale, the sum of five hundred and five thousand four hundred and fourteen dollars and six cents ($505,414.06), with interest thereon from January 1, 1888, to April 9, 1888, at seven per cent. per annum, and interest on the amount of such principal and interest from April 9, 1888, to February 11, 1890, the date of the entry of this decree, at the rate of six per cent. per annum; also to said Barling as such executor or his said solicitors, the further sum of eight thousand and twenty-eight dollars and thirty-nine cents ($8,028.39), being for taxes paid, under authority of this court, since April 9, 1888, with interest thereon, and that he pay to said Barling as executor, or his said solicitors, one-half of the remaining proceeds of such sale, and that he pay to the solicitors for the complainant the other one-half.

In case the purchaser at the sale under said decree
166 shall fail to pay the unpaid part of said purchase-money so bid by him at said sale, in full to said George Bass, mas-

ter of this court, within the said time so fixed for the payment thereof, the said sale shall thereupon be set aside and a re-sale had of said premises upon terms to be settled by the court, with liberty to the parties to apply; and thereupon the said Henry A. Barling, as such executor, said Barling and Mandel as trustees, and said Hyman as administrator, as aforesaid, jointly and severally pray an appeal to the Supreme court of this state, and such appeal is allowed by the court as so prayed upon the filing of an appeal bond, conditioned according to law, in the penal sum of one hundred thousand dollars, to the said William H. Peters, receiver, and George M. Bogue, surety, to be approved by the court within twenty days from the entry of this decree, and twenty days is allowed for filing a certificate of evidence.

166 And this cause having been heard at the January term, 1890, of this court, and the parties complainant and defendant purchasers and objectors having, by their respective solicitors, agreed at such time, in open court, that such order or decree as this court should enter herein, should be entered as of such terms, and of the date of February 11, 1890. It is accordingly ordered that this decree be entered and have effect *nunc pro tunc* as of the 11th day of February, 1890.

The issue then arising from the plea of the defendants filed in the case at bar, is, simply, did the court, in the case of *Peters, receiver*, v. *Hyman, Jr., et al.*, adjudicate finally the questions sought to be raised by the complainant's bill in this case? If not, the plea should not have been sustained. It becomes, then, a question purely of determining what the court did adjudicate finally in the case of *Peters, receiver*, v. *Hyman, Jr., et al.*, in order to determine whether or not the issues sought to be raised in the case at bar are *res adjudicata*.

CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

Hetty H. R. Green and Edward H. Green
vs.
George M. Bogue *et al.*
} *In Chancery.*

ASSIGNMENT OF ERRORS.

178 The court erred in sustaining the plea of the appellees.

The court erred in not overruling the plea of the appellees.

The court erred in dismissing the bill.

L. H. BISBEE,
Attorney for Appellants.

Marked—Filed October 20, 1891.

BRIEF AND ARGUMENT.

Upon a hearing before the Hon. Walter Q. Gresham, in the United States Circuit court, the plea of the defendants in this cause was sustained, on the ground that the matters sought to be raised by the complainants in their bill, had been finally adjudicated in the case of *Peters, Receiver*, v. *Hyman, Jr., et al.*, in the Circuit court of Cook county, in the State of Illinois.

An examination of the issues and findings in the latter case now becomes necessary, in order to determine what was there adjudicated.

On August 29, 1887, Peters, who had been appointed receiver of the Exchange National Bank of Norfolk,
26 Virginia, filed his bill of complaint in the Circuit court of Cook county, alleging therein that one Robert W. Hyman, now deceased, had formerly been associated with Edward Mott Robinson in the purchase of section 21, township 39 north, range 13 east of the third principal meridian, in Cook county, Illinois, for the joint account of himself and the said Edward Mott Robinson. The
28 terms of the said purchase were set out in the bill by exhibiting therein a copy of a contract made between the said Robert W. Hyman and Edward Mott Robinson, during the lifetime of the said Edward Mott Robinson, and a later contract between the said Robert W. Hyman and the trustees of the estate of Edward Mott Robinson.

The bill alleges that by the terms of these contracts
29 Edward Mott Robinson during his life and the trustees of his estate thereafter, were to have contributed and did contribute all of the money necessary to pay for the said land, and were to have made and did make all of the ad-

vances that were necessary to be made for taxes, and all
29 other necessary purposes, upon the said section 21, and that in the event of the sale of said premises the amount of money so advanced by Edward Mott Robinson and by the trustees of his estate was, first, to be repaid to the trustees of the estate of Edward Mott Robinson, with interest thereon at the rate of seven per cent. per annum, and that the balance of the proceeds of such sale, if any, should be equally divided between Edward Mott Robinson, his heirs, executors, administrators and assigns, and the said Robert W. Hyman, his heirs, executors, administrators and assigns.

The bill further alleges that by the provisions of the will of Edward Mott Robinson, which was admitted to probate in the city of New York on the 30th day of June, 1865, the premises known as section 21, as aforesaid, were devised to Henry A. Barling, Abner H. Davis and
32 Henry D. Mandel, as trustees; to hold the same under the conditions of a certain trust therein expressed. It alleges that Edward Mott Robinson, and since his decease the trustees of his estate, have advanced large sums of money to be applied to the purchase and improvement of said section 21, and that the legal title to said lands is now held by the trustees of the estate of Edward Mott Robinson as security for the repayment of such advances, and that Hetty H. R. Green has the beneficial interest in the title and interest so remaining in said trustees.

The bill further recites that Robert W. Hyman died intestate on the 15th day of May, 1885, and at the time of his death he was the owner of the equitable interest in and to an undivided half of section 21, subject to the charge made upon said section in pursuance of the agreement made by the said Robert W. Hyman in his lifetime

with Edward Mott Robinson, in relation to the repayment of the money so advanced by said Edward Mott Robinson.

The bill further alleges that during the lifetime of Robert W. Hyman he became indebted to the Exchange National Bank, of Norfolk, Virginia, for a large sum of money, and that being so indebted, the said Hyman caused to be delivered to the said bank a declaration of trust signed by Henry A. Barling, as executor of the estate of Henry Mott Robinson, and also by R. W. Hyman. That the purpose of such a declaration of trust was to secure the said bank for the indebtedness then due it from the said R. W. Hyman. By the terms of the trust R. W. Hyman assigned to the said Exchange National Bank as such security all his interest in said Section 21, if that interest should not amount to more than the sum of $100,000.

The bill further alleges that the estate of Robert W. Hyman still remains unsettled and that the same is insolvent. It avers that no accounting has been made between the estate of Edward Mott Robinson and the estate of Robert W. Hyman, in relation to said section 21. It alleges that the claim of the Exchange National Bank against Robert W. Hyman has been presented to the Probate court of Cook county, in which the estate of the said
33 Hyman was being administered, and that the administrator of such estate had neglected and refused to pay any portion of the indebtedness so due to the said bank, and also neglected and refused to take any steps to compel a sale of the said premises, in order that the proceeds of such sale might be divided according to the original agreement between the said Edward Mott Robinson and Robert W. Hyman.

It alleges that said section 21 can now be sold for more

than sufficient to satisfy all of the claims of the said Robinson and his said trustees, and also to pay the indebtedness due the Exchange National Bank. It charges that the trustees of the estate of Edward Mott Robinson refused to sell said section 21, and claim the right to hold said lands and not to make sale until they shall see fit so to do, and prays that an accounting may be had between the trustees of the estate of Edward Mott Robinson and the Exchange National Bank of Norfolk, holding as aforesaid the interest of the said Robert W. Hyman, and that said section 21 may be decreed to be sold and the proceeds of such sale distributed in accordance with the rights and equities of the parties.

It is thus clearly to be seen from the allegations of the foregoing bill that the only issue proposed by said Peters as receiver for the Exchange National Bank was, whether or not an accounting should be had at once between the trustees of the estate of Edward Mott Robinson and the Exchange National Bank, holding the interest of Robert W. Hyman, and the said section 21 sold and the proceeds thereof divided in accordance with the rights and equities of the parties.

To this bill Robert W. Hyman, Jr., who was administrator of the estate of Robert W. Hyman, deceased, and all the other heirs, to the number of twenty-one, of Robert
33 W. Hyman, were made defendants, together with Henry A. Barling, Edward D. Mandel and Edward H. Green, trustees under the will of Edward Mott Robinson, and Hetty H. R. Green, F. M. Hyman, George L. Arps and Abner H. Davis, all of whom were likewise made parties defendant.

On the 28th day of December, 1887, Robert W. Hyman, Jr., filed a general demurrer to the said bill. On the 18th

40 day of November, 1887, Henry A. Barling, Edward D. Mandel and Edward H. Green, as trustees, and Hetty H. R. Green likewise filed a demurrer to said bill. On the 5th day of December, 1887, upon a hearing, all the de-
41 murrers were overruled, and on the 4th day of January, 1888, Henry A. Barling and Edward D. Mandel filed their answers in said cause.

By their answers these defendants, as trustees, admit
43 nearly everything that is alleged in the bill of complaint. They deny that the Exchange National Bank has such an interest in said section 21 as will permit them to question the accounts between the trustees of the estate of Edward Mott Robinson and the administrator of the estate of Robert W. Hyman. In their answer they insist that the
44 sale of said section 21 should not be limited to a certain time, but that the time for such sale should be determined by the judgment of the executors and trustees of the estate of Edward Mott Robinson, and that if it should be appear to said trustees that it would be advantageous to delay the winding up of the affairs between them and the estate of Robert W. Hyman, then the trustees should be permitted to exercise their discretion as to when said property should be sold.

The answer alleges that said section 21, by reason of
45 it being very close to the city of Chicago, is likely to become more valuable in the near future, and that therefore it is desirable not to sell the land at this time.

On the same day the answer of Edward H. Green, as trustee, and Hetty H. R. Green was filed in said cause.
49 This answer likewise admits nearly all of the allegations of complainant's bill, but avers that the right to sell said section 21 remained with the trustees of the estate of Edward Mott Robinson, and that no sale should be made

until they should be satisfied that it would be for the best interests of the estate of Edward Mott Robinson, and for the joint enterprise undertaken between the said Robinson and Robert W. Hyman.

53 On the fourth day of January, 1888, the joint answer of Robert W. Hyman, Jr., in person and as administrator, and of all of the said twenty-one heirs of the said Edward Mott Robinson was filed. In their answer they admit in a large measure the allegations of the bill, but do not admit that the amount claimed by Peters, as receiver for the bank against the estate of Robert W. Hyman is correct, and ask for proof of the same.

They deny that the Exchange National Bank has the right under the provisions of the trust given to them to de-
55 mand a forced sale of said section 21, and aver that because of the favorable situation of said section 21, its value will in all probability be greatly enhanced in the near future, and because of this fact the property ought not now be disposed of by a forced sale.

It readily appears therefore from examination of the bill of complaint and of the answers filed thereto, that the only vital question at issue between all of the parties was whether or not said section 21 should be sold *at that time.*

The complainant contended that it was his right under the provisions of the contracts made between Robert W. Hyman and Edward Mott Robinson, to cause said section 21 to be immediately sold and the proceeds divided, in order that his claim against the estate of Robert W. Hyman might be satisfied.

The defendants, on the other hand, contended that said section 21 was a valuable piece of property, situated in close proximity to the city of Chicago, and be-

cause of the rapid development of said city, said section 21 would, in all probability, soon acquire a much greater value than it then possessed, and that the right to determine when the said property should be sold belonged absolutely to the trustees of the estate of Edward Mott Robinson, and not to Robert W. Hyman, or to his heirs, executors and assigns.

On the 9th day of April, 1888, a decree was entered in said cause which, after reciting all of the facts in relation to the joint adventure between Edward Mott Robinson and Robert W. Hyman, concluded by finding that the amount due the trustees of the estate of Edward Mott Robinson under the terms of the agreements between them and Robert W. Hyman was $505,414.06, with interest thereon from January 1, 1888, at seven per cent. That the amount due the Exchange National Bank was $83,426.35. It decreed that the joint adventure between Edward Mott Robinson and Robert W. Hyman should be wound up and closed, and that said section 21 should be sold, and that from the proceeds of such sale the amount found to be due the trustees of the estate of Edward Mott Robinson should first be paid, after which the proceeds, if any, should be equally divided between the Exchange National Bank and the trustees of the estate of Edward Mott Robinson. It was, however, provided in said decree that if said section 21 should not produce at the sale the sum of $600,000, then complainant's bill of complaint should be dismissed at complainant's cost.

From the entering of this decree the defendants prayed an appeal to the Appellate court of the First district of Illinois, in which court the decree of the Circuit court was affirmed, and an appeal was taken by the defendants to

the Supreme court of the State of Illinois, where the de-
18 cree of the lower court was likewise affirmed.

On the 10th day of January, 1890, George Bass, one
159 of the masters in chancery of Cook county, State of Illinois, filed his report of sale in said cause, in pursuance to the decree before entered on the 9th day of April, 1888. In his report the master stated that he had sold said section 21 upon the 21st day of December, 1889, to George M. Bogue for the sum of $602,000. which was the highest bid he had received for the whole of said section.

Let it be borne in mind that the memorandum of agreement made between William H. Peters, as receiver of the Exchange National Bank, and Bogue & Hoyt, in relation
12 to the sale of the interest of said bank to Bogue & Hoyt, was made on the 20th day of December, 1889, and that the sale of said premises by George M. Bass was made to Bogue & Hoyt on the 21st day of December, 1889, one day thereafter.

Let it also be borne in mind that prior to the day of said sale, and upon that day, the defendants in the orig-
171 inal bill of *Peters* v. *Hyman, Jr., et al.*, and the complainants in the cause at bar did not know of the existence of the agreement made on the 20th day of December, 1889, between the said William H. Peters and Bogue & Hoyt.

This latter contract had been kept a profound secret, closely guarded. A knowledge of its contents on the part of the complainants in the case at bar upon the 21st day of December, the day of the sale, would have utterly defeated its purpose.

After the sale had been made, and before its confirmation by the Circuit court, the defendants learned of the

contract of December 20th, and on the 15th day of Janu-
172 ary, 1890, they filed their objections to the confirmation of the master's report, together with the petition praying that the sale of the said premises be set aside and a re-sale ordered.

One of the grounds of objections there urged was that George M. Bogue was not a *bona fide* purchaser under
172 said decree, nor was the sum of six hundred and two thousand dollars the entire purchase money agreed to be paid by him for the said premises. That Bogue, although publicly bidding the sum of six hundred and two thousand dollars as the entire purchase money for the premises, yet such bid was made by him in accordance with a collusive
173 and secret understanding with said receiver, by which understanding Bogue was in reality to pay for the said premises an additional sum of $91,921.92, the full face value of said receiver's claim against the estate of Robert W. Hyman.

The petition of the objectors alleged that, because of this collusive and fraudulent agreement, the said sale was made in fraud of the rights of the petitioners.

It further alleged that Bogue had prior and until the time of the said sale professed to the petitioners to be the agent of the receiver, for the purpose of negotiating and
174 furthering a sale of said premises, but that in fact he was the agent of the Grant Locomotive Works, a corporation organized under the laws of the State of Illinois, and as such agent he was secretly representing said corporation, by and with the knowledge and consent of the said receiver, and that it was further agreed between the said Bogue and the said receiver that in consideration that the said receiver should not bid in competition with the said Bogue at the said sale, the said Bogue should pay to the

said receiver the full face value of his claim against the estate of Robert W. Hyman, and should likewise be permitted by the said receiver to purchase the said premises at the lowest possible figure permitted by the decree of the court.

The objectors aver that because of this secret agreement, the receiver has abused the process of the court, and has sacrificed the property for an inadequate consideration, and prays that the sale may be set aside, and a resale of the premises ordered. They pray also that George M. Bogue, together with the complainant, may be required to answer their said petition.

On the 17th day of January, 1890, there was filed an amendment to the objection heretofore filed, which it was alleged that by the attempted or collusive sale and assignment of Robert W. Hyman's interest, in the proceeds arising from the said sale by virtue of the decree entered in said cause, to Bogue, the purchaser of the said premises at the said sale, the claim of the said Peters as receiver against the estate of Robert W. Hyman still remain unsatisfied to the extent of seventy-nine thousand dollars, and, therefore, a resale of said premises ought to be made.

On the same day, January 17, 1890, the joint answers of Peters, receiver, and Bogue, to the objections and the petition of the defendants was filed. In this answer it is denied that the trustees of the estate of Edward Mott Robinson, or of Robert W. Hyman, have such an interest in the subject-matter of said sale as to entitle them to object thereto. They deny that Bogue was not a *bona fide* purchaser, or that $602,000 was not the whole purchase price for said premises. They deny that there was a collusive and secret understanding between Peters and

Bogue, but admit that that the agreement of December 20th between Peters and Bogue & Hoyt was not known
171 to the objectors before the sale of the said premises upon the 21st day of December, 1889. They deny that up to the time of the said sale Bogue professed to the objectors to be the agent for Peters, for the purpose of making the sale to the highest bidder, and they deny that he, Bogue, was under any obligation whatever to said objectors, or was bound to disclose to them any of his acts and doings in relation to said sale.

They admit that when bidding Bogue was acting on behalf of the Grant Locomotive Works. They deny that there was an agreement whereby Peters, as receiver, should bid at the sale in competition with Bogue. They deny that they have abused the process of the court, or been guilty of any fraud, collusion or deceit, whereby the objectors were misled in relation to said sale.

They deny that the premises were sacrificed for an inadequate price.

It readily appears from an examination of the joint answer of Peters and Bogue, that several issues were tendered by their answer to the petition of the objectors, one or more of which, if sustained, upon a hearing, would have been sufficient to have prevented an order of the court setting aside the said sale and directing a resale to be made.

On the 11th day of February, 1890, the final decree
164 was entered in said cause, which recites that on reading the report of George Bass, one of the masters in chancery of this court, heretofore filed herein, and the objections to the confirmation of the sale so reported by the master, and the portion praying that said sale be set aside, filed

herein on behalf of Henry A. Barling, as executor under the last will and testament of Edward Mott Robinson, deceased, Henry A. Barling, Edward D. Mandell, Edward H. Green, as trustees under the will of said Robinson, and Robert W. Hyman, Jr., as administrator of the estate of Robert W. Hyman, deceased, by Paddock & Wright, their solicitors, said objections and petition being in writing, and on reading the affidavits filed herein, in support of said objections and said petition and counter-affidavits filed on behalf of the complainant, as well as the exhibits attached to all such affidavits, and also the answer of the complainant and George M. Bogue to said objections and petition, and said Edward H. Green, as trustee, having withdrawn his appearance as objector herein, after hearing Messrs. Paddock & Wright, and Newton A. Pardridge, of counsel for said Henry A. Barling, as executor, and said Robert W. Hyman, as administrator, and also George W. Smith, Abram M. Pence, and David B. Lyman, of counsel for the complainant herein, William H. Peters, as receiver, and said Bogue, *and the court being now fully advised in the premises, doth order, adjudge and decree that the said report of the said master*
165 *be, and the same is hereby approved and confirmed, and the sale of the premises described in the decree entered herein on the 9th day of April, 1888, to George M. Bogue for the sum of six hundred and two thousand dollars ($602,000), is in all respects approved, ratified and confirmed.*

Upon an examination of the decree the vital points only of which are here set out, we can find no reference whatever to the questions raised by the objectors to the master's report, save the one and single question, Should or should not the sale be confirmed?

No order appears of record overruling the objections made to the master's report. The decree recites that after hearing counsel for certain parties named in said de-
65 cree as objectors, and after reading the affidavits and petition filed herein in support of said petition, and the counter-affidavits filed on behalf of the complainants, the court being fully advised in the premises, doth order, adjudge and decree that the report of said master be approved and confirmed, and the sale of said premises approved, ratified and confirmed. Nothing appears in the decree to show upon which one or which of the issues tendered by the petition of the objectors, and the answer of the respondents filed thereto, the court was moved to confirm the report of the said master and to approve the said sale.

If the court should have found, upon a hearing, that the objectors had not such an interest in the subject-matter of said sale as to entitle them to appear and object, that, in itself, would have been a sufficient ground for the confirmation of the master's report, and the affirmance of the sale, but nothing appears in the decree to show whether or not that was the issue which led to the affirmance of said sale.

If the court should have found upon a hearing that George M. Bogue was a *bona fide* purchaser at said sale, that would have been ground sufficient to have affirmed such sale.

If fraud and collusion was found by the court to have been practiced in relation to said sale, that might have been a sufficient ground for the court to have refused to confirm the sale; or on the other hand, if no fraud had been practiced, in the opinion of the court, then that issue alone being tendered, the court would have been bound to have confirmed the said sale.

If the court had found that Bogue was acting as the agent of the Grant Locomotive Works, and had never held himself out to the objectors as the agent of the receiver in negotiating the said sale, that alone as a separate issue might have been sufficient ground to lead the court to confirm the sale.

If the court upon a hearing found that there was not sufficient evidence for it to conclude that there was a secret understanding between Peters and Bogue, that Peters should not bid in competition with Bogue, then it would have been bound, this being the one issue tendered, to have confirmed the said sale.

If the court upon a hearing was satisfied that the amount publicly bid, namely: $602,000, was a fair and reasonable amount to be paid for the said premises, and that if a resale should be ordered, it would be doubtful whether a larger sum could be realized, that fact alone would have been sufficient to have moved the court to affirm the said sale.

Hence it appears that anyone of the issues tendered, if standing alone, might have been the moving cause which induced the court to make its finding in favor of a confirmation of the sale, and it cannot be said, nothing appearing of record as to what was the issue determined by the court, that all of these issues were finally adjudicated when the court, by its decree, simply confirmed the Master's report and affirmed the sale.

All of these issues tendered were simply collateral to the main issue, namely: The sale of the said premises, and this alone was the issue upon which the court irrevocably passed.

In the decree the court does not attempt to find that a

larger sum than $602,000 was agreed to be paid and was in fact paid by the purchaser for said premises. The only legal inference that can be drawn from the decree affirming the sale of said premises, when taken in connection with the objections filed, is that there was not sufficient evidence of the matter set up in the petition of the objectors produced to move the court to set aside the said sale, and order a resale. The court therefore ignored the issues tendered and affirmed the report of sale, as it was bound to do, unless sufficient evidence should lead it to a contrary view.

It will be observed, also, that of the two complainants in the case at bar, Edward H. Green, as trustee, withdrew as an objector before the decree was entered in the cause, and that Hetty H. R. Green, the sole beneficiary
165 under the will of Edward Mott Robinson, did not file objections to the said master's report, and was in no way a party to said objections, or to any of the issues tendered thereby. It cannot, therefore, be said that these complainants are irrevocably bound by a determination of the issues tendered by the petition of the objectors and the answer of the respondents, when they were not objectors and were not parties to the petition filed by the objectors, and the decree entered in the cause, after a hearing upon the objections filed, is absolutely silent as to all of the issues tendered in said petition and objections.

Appellants, therefore, contend that the only issue finally determined in the case of *Peters, Receiver*, v. *Hyman, Jr., et al.*, was the question of the time when the sale of the said premises should be made. That question having been determined by a court of competent jurisdiction, it is here admitted, cannot again be reopened; but all collateral questions which arose in the effort to determine

the issue of sale cannot be said to have been finally adjudicated.

The bill of complaint in the case of *Peters, Receiver,* v. *Hyman, Jr., et al.*, and the answers filed thereto, raise none of the issues presented by the petition of the objectors. The only issue tendered by the pleadings in said cause was the issue of the time of sale, the complainant contending for an immediate sale, the defendants urging that the sale should be delayed, in order that all the parties in interest might enjoy the fruits of a large advance in the value of the said premises by virtue of the favorable situation of said section 21.

Believing then, that the only issue determined by the Circuit court of Cook county by its decree in the case of *Peters, Receiver,* v. *Hyman, et al.* was the question of the time for the sale of said section 21, it becomes necessary to look for a moment at the issue tendered in the case at bar, in order to determine whether or not the complainants in the case at bar are estopped by the decree in the former case of *Peters, Receiver,* v. *Hyman, Jr., et al.*, or whether the questions sought to be raised by the complainants in this cause were finally and irrevocably adjudicated in the former case by the Circuit court of Cook county.

The bill of complaint in the case at bar recites at length the circumstances which led up to the sale of section 21
2 upon the 21st day of December, 1889, but it does not pray that said sale may be set aside or ask for a resale of the said premises.

The bill alleges that because of the fraudulent and collusive agreement entered into on the 20th day of December, 1889, between Peters, as receiver, and Bogue &

Hoyt representing the Grant Locomotive Works, a fraud was committed against the complainants in this, that the actual purchase price of the said premises was not bid at the said sale, but that the real and actual amount of money paid because of the sale of the said premises was $91,921.92, more than the amount openly bid at the sale, and received by the said master in chancery, in pursuance thereof.

It alleges that this $91,921.92 has been actually paid by Bogue & Hoyt, representing the Grant Locomotive Works to some one of the defendants named, and that it was paid in pursuance of and by virtue of the sale to the Grant Locomotive Works of said section 21.

It further alleges that the said $91,921.92 represents profits earned in the joint adventure between Edward Mott Robinson and Robert W. Hyman, and that by the terms of the contracts between Edward Mott Robinson and Robert W. Hyman, one-half of the said $91,921.92 belongs justly and equitably to the trustees of the estate of Edward Mott Robinson, for the use of Hetty H. R. Green.

Under the terms of the will of Edward Mott Robinson, Hetty H. R. Green is the sole beneficiary of the profits earned by the interest of Edward Mott Robinson in the joint adventure between himself and Robert W. Hyman; consequently the only party interested in seeking to have one-half of this $91,921.92 declared to be a trust fund, is the said Hetty H. R. Green, and she brings her complaint jointly with her husband, Edward H. Green, praying that one-half of this fund may be declared to be a trust fund in the hands of whomsoever it now is, for her separate and sole use.

The issue then in the case at bar as made by the bill of complaint is not whether there is such a fund, amounting to $91,921.92, but whether or not, there being such a fund, produced by virtue of the sale of the said premises, one-half of it should not then be declared to be a trust fund held for the use of Hetty H. R. Green, who in justice and equity is the sole beneficiary therefor.

We cannot therefore perceive how any of the questions determined in the case of *Peters, Receiver*, v. *Hyman, Jr., et al.*, can be made a bar to the relief prayed for in this cause.

If all of the issues sought to be raised by the petition and objections and the answers thereto in the case of *Peters* v. *Hyman, Jr., et al.*, had been judicially determined by the court, in that case, we do not see how they could in any way affect the case at bar. Surely if a fund amounting to $91,921.92 was paid to Peters as receiver, or to some one of the defendants acting as his agent or solicitor, by virtue of the sale of said section 21, that fund must have been created by Bogue & Hoyt, acting for the Grant Locomotive Works, who were the purchasers of the said premises, and it must have been created in consideration of the purchase of the said premises, and as a part of said consideration it should be distributed equitably to the parties entitled to receive the profits arising from such sale.

We therefore contend that the plea of the defendants in this cause should not have been sustained, and that the questions here sought to be determined cannot be said to be *res adjudicata*.

The law of *res adjudicata* is not intended to raise a bar in a case of this kind. Its only purpose is to prevent continuous and vexatious litigation upon the same issues,

and it applies only in cases where an issue of fact has been fairly and fully made by the pleadings in the cause, and a hearing has been had and a judicial determination arrived at upon those issues.

A matter becomes *res adjudicata* only when it has once been fully heard by a court of competent jurisdiction and properly passed to final judgment without fraud or collusion.

In order, however, for a matter to be said to have become *res adjudicata*, it must have arisen in a case, the parties to which were the same and the issues identical with the parties to the issues in the case in which the bar is sought to be raised, neither of which conditions are found in the case at bar.

The principal defendants, George M. Bogue, Henry W. Hoyt, Hamilton B. Bogue, George W. Smith, Abram M. Pence and Willard T. Block, in the case at bar, were not parties in the case of *Peters* v. *Hyman, Jr., et al.*, and twenty-two of the defendants in the latter case are not parties to the case at bar.

In the first suit Henry A. Barling and Edward D. Mandell were co-defendants with the complainants in this case. In the case at bar they are defendants and adversaries of the complainants. This is a direct violation of the law of *res adjudicata* in relation to parties.

In order to subject an issue to the doctrine of *res adjudicata*, it must be clear, definite and certain. An informal and incidental submission of collateral questions to the court will not conclude them. The issue must be removed from the domain of doubt and become distinct and certain in its character. When there are two or more courses open to the court to arrive at a decision,

the presumption must be inevitable that the court followed a particular course, in order to raise a bar along that line. It must appear by the record of the prior suit that the particular controversy sought to be concluded was necessarily tried and determined, and that the same proof necessary to establish the allegations of the second suit was offered necessarily in the first suit, in order to have reached the decision rendered in that suit. The record must show that the decree could not have been rendered without deciding the particular matter raised in the second suit.

Some interpretations of the law of *res adjudicata* are herewith submitted.

Ever since the Duchess of Kingston Case, 2 Smith's Leading Cases, page 734, was decided in 1776, the courts of both England and America have followed, almost without question, the law as there interpreted, upon the question of *res adjudicata*. It was there said:

"From the variety of cases relative to judgments being "given in evidence in civil suits, these two deductions "seem to follow as generally true: First, that the judg- "ment of a court of concurrent jurisdiction directly upon "the point, is, as a plea, a bar, or as evidence, conclu- "sive, between the same parties upon the same matter, "directly in question in another court; secondly, that "the judgment of a court of exclusive jurisdiction, "directly upon the point, is, in like manner, conclusive "upon the same matter, between the same parties, com- "ing incidentally in question, in another court, for a dif- "ferent purpose. But neither the judgment of a con- "current or exclusive jurisdiction is evidence of any "matter which came collaterally in question, though "within their jurisdiction, nor of any matter incidentally "cognizable, nor of any matter to be inferred by argu- "ment from the judgment."

Herman on *Res Adjudicata*, page 98, says:

"A matter or cause of action is *res adjudicata* when it "is actually merged in a judgment, or the same point has "already been decided between the same parties, and if "by law a judgment could have been given for the plaintiff "in a former suit, for precisely the same cause of action "as that for which the present suit is brought, it is "within the rule passed into judgment and is *res adjudi-* "*cata*, but in order to bar the second action the circum- "stances must be such that the plaintiff might have "recovered in the first for the same cause alleged in the "second. It is not sufficient that the transactions in- "volved in and giving rise to the two actions, are the "same. The causes of action must be identical to the "extent that the same evidence will support both."

The same author, on page 102, says:

"The essential conditions under which the plea of *res* "*adjudicata* becomes applicable are the identity of the "thing demanded, the identity of the cause of demand "and of the parties in the character in which they are "litigants."

Likewise the same author, on page 114, says:

"A stranger to a judgment cannot avail himself thereof "by plea of *res adjudicata* in a suit between him and "one of the parties thereto," citing: *Henry* v. *Woods*, 77 Mo., 277.

It will be observed that George M. Bogue, Henry W. Hoyt, Hamilton M. Bogue, George W. Smith, Abram M. Pence and Willard T. Block were all strangers to the judgment entered in the case of *Peters, Receiver* v. *Hyman, Jr., et al.*, and all are seeking in the case at bar to have the judgment in the former case pronounced *res adjudicata* in this case.

The Supreme court of the United States has frequently had occasion to pass upon the question of what elements are necessary in a decision in order to pronounce it *res adjudicata* in a subsequent proceeding.

In the case of the *Packett Company* v. *Sickles*, 5 Wallace, 580, the court said:

"As we understand the rule in respect to the conclusive-
"ness of the judgment and verdict in a former trial be-
"tween the same parties, when the judgment is used in
"pleading as a technical estoppel, or is relied on by way
"of evidence as conclusive, *per se*, it must appear by the
"record of the prior suit that the particular controversy
"sought to be concluded was necessarily tried and de-
"termined; that is, if the record of the former trial shows
"that the verdict could not have been rendered without
"deciding the particular matter, it will be considered as
"having settled that matter as to all future actions be-
"tween the parties."

In the case of *Hopkins* v. *Lee*, 6, Wheaton, 114, the court said:

"The decree in this case was proper evidence, if it de-
"cided or professed to decide the same question which
"was made on the trial at law, for to points which came
"only collaterally under consideration, or were only in-
"cidentally under cognizance, or could only be inferred
"by arguing from the decree, it is admitted that the rule
"does not apply."

In the case of *Aspben* v *Nixon*, 4 How., 498, the court said:

"A judgment or decree set up as a bar by a plea, or
"relied on as evidence by way of estoppel, to be con-
"clusive, must have been made, first, by a court of com-

" petent jurisdiction upon the same subject matter; sec-
" ond, between the same parties; third, for the same pur-
" pose."

In the *Washington, Alexandria, Georgetown Steam Packet Co.* v. *Sickles*, 24 How., 159, Mr. Justice CAMPBELL says:

"The essential conditions under which the exception of
" *res adjudicata* becomes applicable, are the identity of
" the thing demanded, the identity of the cause of the
" demand and of the parties in the character in which
" they are litigants. A judgment or a decree set up as a
" bar by a plea, or relied on as evidence by way of estop-
" pel, must have been made by a court of competent juris-
" diction upon the same subject-matter, between the same
" parties and for the same purpose. It must be shown by
" the record that the very point which it is sought to estop
" the party from contesting was distinctly presented by
" an issue and expressly found by the jury, and that no
" estoppel by verdict and judgment can arise in an action
" on the case, or an action of assumpsit tried upon the
" general issues, because in no such action can any pre-
" cise point be made and presented for trial by a jury."

In *Davis* v. *Brown*, 94 U. S. 423, Mr. Justice FIELD said:

"When a judgment is offered in evidence in a sub-
" sequent action between the same parties, on a dif-
" ferent demand, it operates as an estoppel, only upon
" the matters actually at issue and determined in the
" original action."

In the same volume, in the case of *Russell* v. *Place*, page 606, Mr. Justice FIELD again said:

" It is undoubtedly settled law that a judgment of a

" court of competent jurisdiction, upon a question directly " involved in one suit is conclusive as to that question in " another suit between the same parties, but to this opera- " tion of the judgment, it must appear either upon the face " of the record, or be shown by extrinsic evidence that the " precise question was raised and determined in the former " suit. If there be any uncertainty on this head in the " record, as for example, if it appear that several distinct " matters may have been litigated upon one or more of " which the judgment may have passed, without indicat- " ing which one of them was thus litigated, and upon " which the judgment was rendered, the whole subject " matter of the action will be at large, and open to a new " contest, unless this uncertainty be removed by extrinsic " evidence showing the precise point involved and de- " termined."

Under the decision in the last case it can hardly be said that all of the issues tendered by the petition and objections filed in the case of *Peters, Receiver*, v. *Hyman, Jr., et al.*, and the answers filed thereto, were settled irrevocably by the decree, when but one of these issues is touched upon or referred to in the decree, and no order appears in the decree affirming or overruling the objections.

In *Perry* v. *Dickerson*, 85 N. Y., 345, the court said:

" To sustain the plea of a former judgment in bar of a " second action it must appear that the cause of action in " both suits is the same, or that the facts essential to the " maintenance of the second action were in issue and de- " termined in the first action adversely to the plaintiff."

Dickinson v. *Hayes*, 31 Conn., 433.

" A judgment is co-extensive only to the issue upon " which it is founded, and conclusive only upon matters

" necessarily involved and included within that issue."
Watt v. *Rice*, 75 Ala., 289.

"The rule is that judgments are conclusive only as to " all facts or issues actually decided or necessarily in- " volved. This does not embrace facts which are merely " collateral, but such as are directly and distinctly put in " issue, and a finding of which is necessary to uphold the " judgment."

Citing further:

Freeman on Judgments, Sec. 257.
McCauley v. *Roberts*, 70 Ala., 432.
McDonald v. *Mobile Ins. Co.*, 65 Ala., 358.
Howard v. *Kimball*, 65 Me., 308.

"To ascertain whether a former judgment is a bar to " present legislation the true criterion is found in the an- " swer to the question: Was the same vital point put " directly in issue and decided?"

Citing:

Outram v. *Morewood*, 3 East, 346.
Lord v. *Chadburn*, 42 Me., 439.

Wells on *Res Adjudicata*, section 14:

"The thing demanded must be the same; the demand " must be founded upon the same cause of action; the " demand must be between the same parties and found by " them against each other in the same quality."
Strong v. *Grant*, 2 Mackay, 222.

" The essential conditions under which the exception " of the *res adjudicata* becomes applicable, are the " identity of the thing demanded, the identity of the

" cause of demand and of the parties in the same char-
" acter in which they are litigants."

Foster v. *The Richard Busted*, 100 Mass., 409.

" Where various matters of defense are set up in the
" answer, and there is a general decree from which it
" does not appear what was the prevailing ground of de-
" fense, it is impossible to hold that the decree operates
" to preclude future proceedings."

Eastman v. *Cooper*, 15 Pick., 276.

" A party cannot plead a former judgment as an es-
" toppel to a present action unless the same point is put
" in issue on the record and directly found by the court
" or jury. It must appear that the judgment was ob-
" tained or defeated because of the pleading introduced
" or the representations made."

Citing:

Gilbert v. *Thompson*, 9 Cush., 348.

Smith v. *Sherwood*, 4 Conn. Rep., 276.

" It is necessary, in order to consitute an estoppel, by a
" former judgment, that the precise point should have
" been put in issue and decided, and this must appear
" from the record alone."

Lotta v. *Russ*, 8 Jones, N. C., 114.

" A decree giving a license to sell land was simply an
" adjudication that it was necessary to sell, and is con-
" clusive in favor of the title of the purchaser, but it is
" not conclusive of the question of debt or no debt,
" as against creditors, or in favor of creditors, or as
" against or in favor of the heirs."

Standish v. *Parker*, 2 Pick., 22.

"The former verdict is conclusive only as to the facts "directly and distinctly put in issue and the findings of "which must have been necessary to uphold the ver- "dict."

Coyt v. *Tracy*, 8 Conn., 267.

"Facts found sufficient to uphold the decree conclude "the parties and nothing else."

People v. *Johnson*, 28 N. Y., 63.

The real question raised by the pleadings in this case was, whether or not the deed for certain premises was a mortgage; in order to disprove this, the defendants attempted to prove that the premises were occupied for a certain time by certain parties. The court said: "The "latter was an incidental or collateral issue, and the "issues in the suit did not necessarily involve the deter- "mination of that question; if the controversy did not "turn upon the particular facts set out, the decree will "not conclude the parties. The mere fact of the alleged "tenancy was undoubtedly found by the judge of the "Superior court, but the fact was immaterial, and the "judgment did not in any respect rest upon that finding; "hence, as to that question, the decision in the former "case is not final."

Lentz v. *Wallace*, 17 Pa. St., 415.

"Neither the judgment of the court of concurrent or "exclusive jurisdiction is evidence of any matter inci- "dentally cognizable, nor of any matter to be inferred "by argument from the judgment."

Succession of Dunford, 1 La. Ann., 92.

"The authority of *res adjudicata* takes place only in "respect to what was the object of the judgment. The

"thing demanded must be the same; the demand must "be founded upon the same cause of action; the demand "must be between the same parties and formed by them "in the same quality."

Lewis Appeal, 67 Pa. St., 153.

"In order to make a former judgment a bar, it should "comprehend the cause of action in the case in which it "is offered, and should cover the whole ground of con- "troversy between parties in the latter case. A collateral "matter, even though it may have been passed upon by "the jury or court, does not work an estoppel; the ques- "tion is, what was the gist of the action under the plead- "ings upon which judgment was recovered; so far and no "further is the judgment conclusive between the par- "ties."

Outram v. *Morewood*, 3 East, 346.

Lord Ellenborough says:

"A judgment in each species of action is final only for "its own purpose and object and no further."

Height v. *The City of Keokuk*, 4 Clark, 206.

"Matters which arise only incidentally, however much "they may influence the mind of the judge or the jury, "are not matters adjudicated."

King v. *Chase*, 15 N. H., 18.

"The judgment is conclusive only upon the matters "which were directly in issue in the former trial, and by "matters in issue is understood to be the matters upon "which the plaintiff proceeds by his action, and the de- "fendant controverts by his pleadings. Facts offered in

"evidence to establish the matters in issue are not them-
"selves in issue."

Lord v. *Thomas*, 36 Pac. Rep., 372.

"The rule in regard to the conclusiveness of the verdict
"and judgment rendered in a former trial between the
"same parties, when invoked in a subsequent suit, re-
"quires that the controversy must be the same in both
"suits, and that the matters in issue must have been
"directly and not collaterally or inferentially decided."
Citing:

Am. and Eng. Enc. of Law, Vol. 21, pages 128 and 144.
Faires v. *McClellan*, 24 N. W., 365.
Marsh v. *Masterton*, 101 N. Y., 401.

The plaintiff brought his bill in equity to dissolve a partnership, and to obtain an accounting, claiming $7,000 was due him under the terms of the partnership contract; the court in the former case found that there was no partnership and dismissed the bill. He now sues for the $7,000 by virtue of his contract with the defendant, whom he had claimed as a partner in the former litigation. The court said.

"The estoppel of an adjudication is limited to the
"point actually decreed; the cause of action must be
"precisely the same, and must be sustained by the same
"evidence. It is not sufficient to establish the identity of
"the two causes of action. It is well settled that one
"may sue to recover damages for fraudulent representa-
"tions upon a sale of property, and if he fails to estab-
"lish a traud and is defeated upon that ground, then he
"may subsequently bring an action for a breach of war-
"ranty based upon the same transaction and the same

" representations, and recover precisely the same dam-
" ages. In one case the action is based on a tort and in
" the other upon a contract, but the causes of action are
" not identical and could not be sustained by the same
" evidence, so a party may sue in an action of trover to
" recover the value of property, and being defeated in
" that action, on the ground that there was no wrongful
" conversion, he may sue to recover the value of the
" property on the theory of a sale."

In the case of *Reynolds* v. *Stockton*, 140 U. S., 266, the defendant appeared and filed an answer to the bill of complaint and took no further part in the trial of the cause, and the court held that the judgment rendered in that case was conclusive only so far as it determined matters which by the pleadings were put in issue, and that judgment could work an estoppel only with reference to the substance of the controversy and its essential concomitants.

Hickerson v. *Mexico*, 58 Mo., 61.

"In order to show that the matter is *res adjudicata*, it
" must appear not only that it was properly in issue at
" the former trial, but also that the verdict and judgment
" necessarily invoked its determination."

In *Kitson* v. *Farwell*, 132 Ill., 339, the court quotes the language heretofore quoted from the Duchess of Kingston case in relation to *res adjudicata*, and affirms and adopts the ruling of that case, and adds further:

" It may be generally stated that by the ' matter in
" issue ' it is understood that matter upon which the
" plaintiff proceeds by his action, and which the defend-
" ant denies or controverts by his pleading, and if the
" declaration on its face shows the special matter set up

" and relied upon by the plaintiff, and the same is denied " by defendant's plea, it will show the ' matter in issue.' " The judgment necessarily follows the nature of the " right claimed in the declaration, and generally speak- " ing, can conclude nothing beyond such right. It is not " evidence of any matter which is only to be inferred " therefrom by argument, and which probably did, but " might or might not constitute the true ground of re- " covery. The authorities are therefore that a judg- " ment is conclusive only of what it necessarily and " directly decides."

In *David* v. *Kennedy*, 105 Ill., 300, Mr. Justice WALKER says: " We fail to perceive that the motion " to set aside the sale on the ground that Kennedy was " not, but the defendants were the owners of the land, " should be given the effect of *res adjudicata* in this " cause; the proceeding was not to reform the deed or " to enjoin defendants in error from asserting title to the " land. That question was not involved, but it, what- " ever its form, was a motion to set aside a sale; this is " a suit brought to enjoin the further prosecution of an " ejectment suit by plaintiff in error, and reform and cor- " rect a mistake in a deed of conveyance. The former " proceeding falls far short of the adjudication of the " question being litigated in this case. There the object " and direct purpose was to have the sale disproved and " set aside. Here the purpose is to have this deed re- " formed and mistake corrected, so it fails of an estoppel " because the questions decided and necessary to be de- " cided are not the same."

In the case of *Umlauf* v. *Umlauf*, 117 Ill., 584, the court said: " For the purpose of this rule it is not suffi- " cient that the question arising in subsequent litigation

" is identical with the one decided in some respects only. " It must be so in all respects. If, therefore, there is an " element in one of the questions which is not contained " in the other, the rule does not apply, for the the ob- " vious reason that this additional element may have " been the turning-point in the previous decision."

The case of *Peters, Receiver*, v. *Hyman, Jr., et al.*, the decree in which has been set up as a bar in this cause, is reported in volume 134, Ill. Reports, page 606.

It will be remembered that when the said plea was filed and the hearing had upon it, the cause of Peters against Hyman *et al.* was pending in the Supreme court of the State of Illinois; hence the decision of the Supreme court in that case can have no bearing upon the issue raised by the plea, save as indicating what were the questions submitted for determination in that cause. Mr. Justice Wilkin, who delivered the opinion in the case, gives several reasons for the court's approving the sale of the master, and refusing to order a resale of the premises; among these reasons are, that mere inadequacy of price will not justify the court in vacating a sale; that a resale will not be ordered on the motion of an interested party, merely to protect him against the result of his own negligence; that Bogue & Hoyt, prior to the sale, had attempted to sell the interest of Peters to the son of Hetty H. R. Green, who refused to buy, and that all the parties interested were present at the sale, and were personally solicited by the master to bid a larger amount, and that the amount actually bid seemed to be reasonably fair; that the objectors were not taken by surprise, and that it is doubtful from the evidence that the objectors relied upon Bogue & Hoyt, as the agents of the receiver, to make said sale for a much larger amount than the amount

actually bid, and that it is not the duty of a prospective bidder at a public sale to publish his intended bid, and that the efforts of the receiver and his agents calculated to and did in fact produce a purchaser; and, finally, that "no sufficient reason is shown for disturbing the sale re-"ported by the master," therefore its confirmation is proper.

From an examination of the opinion of the court in this cause the conclusion must be reached that the only question which the court intended to judicially determine was, whether or not the sale reported by the master should be confirmed, or whether a resale of the property should be ordered, and the conclusion of the court is, that "no sufficient reason" is shown for disturbing the sale reported by the master. To say that all of the questions touched upon by Justice Wilkin in his opinion, as being questions incidentally raised upon the hearing of the question of sale, were irrevocably determined in that proceeding, would be to work a great injustice to the defeated parties in any cause.

It is therefore contended that the decision of the United States Circuit court in this case must be overruled.

First: Because all of the parties in the suit at bar are not the same as in the case of *Peters* v. *Hyman, Jr., et al.*, and the parties who are the same in both cases, are not related in the same manner. In the former suit, Henry A. Barling and Edward D. Mandel contended with the complainants for a common cause; in the latter they are adversaries.

Second: Because George M. Bogue, Henry W. Hoyt, Hamilton M. Bogue, George W. Smith, Abram M. Pence

and Willard T. Block, who are parties defendant in this suit, and who, if the allegations of the bill are true, hold the fund, one-half of which is sought here to have declared to be a trust, were strangers to the case of *Peters* v. *Hyman, Jr., et. al.*, and as such can claim nothing by virtue of the decree in that case.

Third: Because the demands in the two suits are entirely different. In the first, the demand was that the property should be sold, and the proceeds divided between the parties. In the second the demand is, that a part of the proceeds fraudulently obtained and withheld, shall be decreed to be a trust fund, held for the use of Hetty H. R. Green, to whom it equitably belongs.

Fourth: The issues determined and to be determined in the two suits are not the same; in the first it was, should the property be sold at that time and the proceeds divided; in the second, it is, the property having been sold, and the purchase price paid therefor, and a portion of the same witheld from the proper parties, through collusion and fraud, shall the part so witheld, if any, be deemed to be held by whomsoever now holds it, to be a trust fund, subject to distribution, according to the rights and equities of the parties.

Fifth: Because all the issues raised by the objections and the answer of the respondents filed thereto, except the issue of sale, were collateral issues, and were not finally and irrevocably determined by the decree in that case.

Sixth: Because Hetty H. R. Green, the sole beneficiary of this fund, which it is sought to have declared a trust, was not a party to the objections filed in the cause of *Peters* v. *Hyman, Jr., et al.*, and Edward H. Green,

who had been a party, withdrew as an objector, before a decree was entered; hence as to these complainants, they are only bound by the issues presented by the bill and their answers filed thereto.

From no point of view from which it is approached, does there seem to be anything in this cause to justify or support the decree entered, and we respectfully submit that it should be reversed and the cause remanded for a hearing upon the merits.

L. H. Bisbee,

Solicitor for Complainants.

158-478

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

Hetty H. R. Green and Edward H. Green,
Appellants,
vs.
George M. Bogue, et al.,
Appellees,

No. 327.

BRIEF FOR APPELLEES.

GEORGE W. SMITH,
DAVID B. LYMAN,
THEODORE S. GARNETT,
COUNSEL FOR APPELLEES.

THE GUNTHORP-WARREN PRINTING COMPANY, 69 DEARBORN ST., CHICAGO.

IN THE

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Hetty H. R. Green and Edward H. Green,
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vs.

George M. Bogue, et al.,
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No. 327.

BRIEF FOR APPELLEES.

The bill in this case was filed by Hetty H. R. Green and her husband, citizens of Vermont, against George M. Bogue and five other citizens of Illinois, Henry A. Barling and Edward D. Mandell, two citizens of New York, and William H. Peters, receiver, a citizen of Virginia.

The citizens of Illinois were served with process, appeared and filed a plea and answer in support. (Rec., 16, 17, 21.) Neither the citizens of New York nor the one of Virginia were served, and neither appeared in the court below. The citizen of Virginia appeared for the first time in this court in answer to its citation. (Rec., 178.)

It will be noticed that counsel for appellants is, therefore, in error, when he says that defendants filed a plea, or refers to a plea of defendants.

Jurisdiction of Barling, Mandell or Peters was never obtained by the court below.

The dismissal of the bill as to them is not made the subject of specific assignment of error. (Appellants' brief, 31.)

The plea of the six citizens of Illinois was held sufficient. (Rec., 22, 23.) A replication thereto was filed and a reference to a master to ascertain the truth ordered. (Rec., 23.) The master reported that the proofs sustained the plea. To the master's findings, but not to the proofs introduced, there were exceptions (Rec., 168, 170), but those exceptions have not been carried into the assignments of error, and there would seem now to be no right of challenge of the truthfulness of the plea. The brief of counsel does not seem to disclose a desire to dispute its verity.

The premises referred to in the pleadings were known generally as section 21, and lay westwardly of and adjacent to the City of Chicago.

In the life-time of Edward Mott Robinson an undivided half of this section was purchased by Robert W. Hyman with money furnished by Robinson and for their joint account. The lands were conveyed to Robinson and the transaction made the subject of a contract in writing between them bearing date the 20th day of June, 1864. (Rec., 27, 28.)

Robinson died on or about June 14, 1865, testate. By his will, after making certain gifts, which it is not necessary to specify, he devised and bequeathed the rest, residue and remainder of his estate, in which was included his interest under the agreement with Hyman to Barling, Mandell and Davis, as trustees, with power to collect,

invest and reinvest. They were directed to pay the net income to his daughter, Hetty Howland (one of the appellants, Mrs. Green), during her life, and upon her death to deliver over the capital to her issue, in such portions as she should by will direct, and in default of direction to such issue in equal shares. In case of failure of such issue said trustees were further directed to deliver over said capital to such persons as the daughter should by will appoint. In default of issue and appointment the estate was to go to the heirs of said daughter, with certain exceptions not necessary to mention.

It will be seen that counsel are again in error when they refer to Mrs. Green as the sole beneficiary, or *cestui que trust*, under the will of her father. She has not even an equitable remainder or right of possession.

After Mr. Robinson's death and in 1865, his executors in conjunction with Hyman, purchased the other undivided one-half of section 21, they furnishing the moneys and taking title, and an agreement in writing between them and Hyman similar to that of 1864 was made, bearing date the 24th day of September, 1867. (Rec., 28.)

In the course of years Hyman became indebted to the Exchange National Bank of Norfolk and to secure it, pledged, with the assent of Robinson's executors, his interests under the two agreements of 1864 and 1867.

In the meantime Davis had died and Edward H. Green, one of the appellants, had succeeded him as trustee.

William H. Peters became receiver of the Exchange National Bank in 1885.

The amounts invested for account of section 21 and its maintenance by Robinson and his executors and trustees had then become, with interest, very large. Peters as

receiver applied to the trustees to sell, and having been refused filed his bill in the state court of Illinois (the Circuit Court of Cook County) to compel a sale.

To this bill Barling, Mandell, Edward H. Green and Mrs. Hetty H. R. Green were made parties defendant. All of them appeared and answered. The representatives and heirs of Hyman (who had died) were also made defendants. Some were served and the others were brought in by publication. The administrator of Hyman appeared and answered.

Such proceedings were had as that on April 9, 1888, a decree was entered directing the closing of the joint venture by a sale of section 21. The upset price was fixed at $600,000, and the decree directed a dismissal of the bill if that sum should not be realized.

The Robinson estate was to be paid first out of the proceeds, $505,414.06, being advances with compound interest at seven per cent., with interest from January 1, 1888, to April 9, 1888, at seven, and thereafter at six per cent., and one-half of the surplus was to be paid to Barling, surviving executor. Out of the remaining half of the surplus, Peters, as receiver, was to be paid $83,426.35, with interest from April 9, 1888, at six per cent., and the rest was to go to the administrator of Hyman. The decree also provided that any of the parties might "bid "and become purchasers as individuals and divested of "their trust relations." (Rec., 67, 68.)

The execution of the decree was stayed by appeal, but after affirmance the Master of the State court caused the premises to be advertised, and they were sold on the 21st day of December, 1889 to George M. Bogue, one of the appellees, for $602,000, or $2,000 more than the upset price.

Mrs. Green filed no objections to the confirmation of the sale, but was not dismissed from the suit. The trustees and executors, including Mr. Green, did file objections, and accompanied or united with the same a petition to set aside the sale and asked a resale.

George M. Bogue was made a party defendant to the petition and answered. (Rec., 165, 170, 175.)

Edward H. Green withdrew as an objector, before the hearing upon the objections, but was not dismissed from the suit. The objections and petitions were heard upon the answer, affidavits and counter affidavits, and on February 17, 1890, an order was entered confirming the sale. *By agreement of all parties* it was entered *nunc pro tunc* as of February 11, 1890. (Rec., 165, 166.)

The bill in this case was filed February 15, 1890.

The firm of Bogue & Hoyt was in 1889 composed of George M. Bogue, Hamilton B. Bogue and Henry W. Hoyt (Rec. 11), and the connection of Hamilton B. Bogue and Henry W. Hoyt with the matters herein involved arose only through their association as partners and signature to the agreement set out in the bill, which will be hereinafter referred to. (Rec., 12.) Williard T. Block was associated with Bogue & Hoyt in negotiations leading to the sale.

George W. Smith and Abram M. Pence were solicitors for Peters, and their connection with this matter arose only through that relation. The charge in the bill against them is that they may have moneys in their hands derived from Bogue & Hoyt. (Rec., 13.)

Henry W. Hoyt died in 1892 intestate, leaving Delia Hoyt his widow, and Edith M. Hoyt, their daughter and his only heir. Mrs. Hoyt was appointed administratrix

by the Probate Court of Cook County, Illinois, and guardian of Edith, who is a minor.

The reason for not joining Barling and Mandell, co-trustees, and Edward H. Green, as complainants, is stated by the bill in the following language:

"That the said trustees, excepting the said Edward H. "Green, are unfriendly to your oratrix, the said Hetty H. "R. Green, the *cestui que trust* of the estate represented "by said trustees, and that the said defendants, Henry "A. Barling and Edward D. Mandell, co-trustees with "the said Edward H. Green, are unwilling to join in this "bill as co-complainants and are therefore made defend-"ants herein." (Rec., 14.)

The agreement of December 20, 1889, between Peters, receiver, and Bogue & Hoyt, contemplated a sale of Peters' interest in the decree of April 9, 1888, and payment therefor at its face, with interest, in case Bogue & Hoyt should secure the land. That firm was to pay the receiver or bid enough as against any other purchaser to secure full payment to the receiver.

The bill alleges in substance:

That after the making of the written agreement of December 20, 1889, Peters and Bogue & Hoyt entered into a verbal stipulation to the effect that Bogue & Hoyt should not bid higher than $602,000, provided they should pay to Peters the sum of $91,921.92; that the purchase was made in the interest of Block, who, as the representative of others, furnished the amount so paid, and that, in fact, the amount at which said premises were purchased by Bogue & Hoyt was $602,000, plus $91,921.92, or such further sum as would make, in addition to the half interest which Peters would have in the surplus, the sum of $91,921.92, and that the said Bogue & Hoyt fraudulently colluded with

said Peters and said Block to secrete from Mrs. Green and the trustees of the Robinson estate the fact that any sum in addition to the amount of said bid was to be paid on account of the purchase of said property. (Rec., 13.)

The objections and petition in the State court set forth on the part of the trustees as grounds of said motion and petition that George M. Bogue was not a *bona fide* purchaser; that the sum of $602,000 was not the entire purchase money agreed to be paid; that Bogue, although publicly bidding $602,000, made such bid under and in accordance with a collusive and secret understanding with said receiver (Peters), to allow the said receiver out of the actual purchase money a further large sum of money sufficient to satisfy his claim with interest up to the date of sale, viz: $91,921.92, which collusive agreement the said Bogue and said receiver would carry out; that the said Bogue, although at and up to the time of the sale professing to the trustees to be an agent of the receiver for the purpose of furthering a sale to the highest bidder, was acting under a secret agreement with the Grant Locomotive Works, which agreement had the consent and cooperation of the receiver and was kept from the knowledge of the trustees; that it was part of the agreement that the receiver should not compete with said Bogue, although publicly professing to be a competitor, and that the said Bogue should pay to the receiver his claim in full, amounting, with interest, to $91,921.92, and that the receiver had abused the process of the court and secretly sold the premises for a sum greatly in excess of $602,000.

The prayer was that Bogue and the complainant should be made respondents and should be compelled to produce letters, papers and contracts.

A supplemental objection styled the transaction an "under-bargain" and asked for a resale. (Rec., 173–176.)

The order of confirmation shows that all the objections, petition and affidavits in support, were duly considered.

At the time the plea was filed and its sufficiency determined, as well as at the dismissal of this cause, the appeal from the order of confirmation was pending and the plea stated that it was so pending at the time it was filed. (Rec., 21.)

The cause upon appeal from the order of confirmation was heard in the Supreme Court of the State of Illinois and an opinion filed on the 31st day of October, 1890. It is reported as *Barling* v. *Peters*, in 134 Ill., page 606, the appeal upon the original decree having been reported also as *Barling* v. *Peters*, in 131 Ill., 78.

In 134 Ill., the court reviewed the evidence introduced by way of affidavits and documents and the statement of the case contains a copy of the agreement of December 20, 1889. The following are extracts from the opinion:

"It is contended that, having been led to believe that "George M. Bogue was acting for the receiver, and that "a bidder would be present at his instance, who would "bid for said property an amount sufficient to satisfy "the bank claim, he had no right thereafter to make an "arrangement with the locomotive works to purchase for "it, without giving notice to objectors. This contention "seems to be based, in part at least, upon the assump-"tion that there existed between the parties a trust rela-"tion, imposing upon the receiver some duty to the ob-"jectors in relation to the sale. This is wholly unten-"able. Whatever may have been the previous relations

"between the receiver and the Robinson estate, *by the "terms of the decree they were placed in antagonistic po- "sitions.* Unless the receiver was able to make the "premises bring at least $600,000, all benefit of the de- "cree in his favor would be lost, and his bill dismissed "at his costs. In that event the Robinson estate would "gain, by a failure to consummate the sale, all that the "trustees of that estate had contended for in the pro- "tracted litigation which had gone before. While it "may be true that there was no disposition to place ob- "structions in the way of the execution of the decree, it "can scarcely be doubted, in the light of all the facts "disclosed by this record, that those most directly inter- "ested in the Robinson estate, at least indulged the hope "that no sale would take place. Nor can it be said that "the receiver owed any duty to the Hyman estate with "reference to the sale, beyond the duty of fair dealing, "which he owed to it and to all the other parties con- "cerned.

"Viewing the receiver then as relieved from any pecu- "liar obligation to the other parties in interest growing "out of any trust relation, was his conduct such as vio- "lated those principles of fair dealing which should ob- "tain as between parties who are at liberty to deal with "each other at arms length? As bearing on this ques- "tion the only substantial conflict in the evidence is as "to whether or not objectors were informed, at the meet- "ing of December 17, that the receiver would have a "bidder at the approaching sale who would bid enough "to insure the payment of his claim; in other words, "whether or not, from what was said by the solicitor of the "receiver, in that interview, the objectors had a right to "expect that the receiver or some one in his interest, would

"bid a sum amounting to about $760,000. Upon this issue "of facts the clear preponderance of the evidence "is against the objectors. Not only is their con- "tention on this point directly disputed by the affidavits "filed on behalf of the respondents, but it is wholly "inconsistent with their conduct at and immediately after "the sale. If it be true, as they claim, that they had "been assured that the receiver, or some one for him, "would bid a sum sufficient to pay the bank claim, which "would require, as we have seen, something over $760,- "000, how is it possible to explain their conduct in stand- "ing by and allowing the property to be struck off for "only $602,000, without objection, and with no assertion "of their alleged understanding, or attempt to bid the prop- "erty up so as to compel the purchaser to pay the amount "agreed upon? Instead of this, they seemed and ex- "pressed themselves as satisfied with the sale at the price "bid, until they learned, on the following day, of the "contract between the receiver and the Grant Locomotive "Works.

"But if it be admitted that, from the interview of "December 17, they had a right to expect a bidder on "behalf of the receiver, to the amount of more than "$760,000, how can it be said that they were misled, to "their prejudice, by the fact that George M. Bogue after- "wards contracted to and did bid in the property for the "Grant Locomotive Works? Under the contract of "December 20, Bogue & Hoyt, on behalf of the Locomo- "tive Works, were bound, if necessary, to bid the prop- "erty up to the very amount which they say they "understood the receiver would bid. What difference "could it make to them whether Bogue was bidding on "behalf of the receiver or for the Grant Locomotive "Works.

"But is there anything in the written agreement of "December 20, when viewed in the light of the attendant "facts, of a fraudulent character? Peters undoubtedly "had the right to use any lawful means to induce a bidder "to appear at the sale and bid, in his interest. To deny "him that right would be to take away from him the "fruits of his successful litigation. The evidence clearly "shows that the objectors understood that the sale depend-"ed upon the success of his efforts, or those of his agents, "to find such a bidder. He clearly had the right to use his "claim as best he could to induce a purchaser to thus bid. "Suppose he had agreed to take $50,000 for it, or to "give time on it to a purchaser, or to sell it on any "other terms favorable to a purchaser, and thereby se-"cured a bidder? Would anyone say that by so doing "he practiced a fraud upon other parties interested in "said premises?

"On the part of the Grant Locomotive Works (the "real purchasers of the claim and bidders at the sale), "the contract of December 20, amounted only to an "agreement on their part to become a bidder at the sale, "and to bid at least the required $600,000, and after "that to take chances against all other bidders, and to "run the property up to $760,912.26, if compelled to do "so by competing bidders, and if it became the purchaser "of the property, to take the receiver's claim at its face "value. We are unable to perceive wherein such a con-"tract tended in any way to prejudice the rights of other "parties interested in the land.

"But objectors say that the arrangement was secret, "and designedly kept from their knowledge. It can "scarcely be contended that it is the duty of a prospective "bidder at a public sale to publish his intended bid. If

"the terms of said contract had been made public, the "representatives of the Robinson estate and the agents of "Mrs. Green, who were all present at the sale, would "undoubtedly have been enabled to compel the Locomo- "tive Works to pay something over $760,000 for the "property, or forfeit its contract with the receiver. "Such publication would doubtless have been greatly to "their advantage, but it by no means follows that keep- "ing the contract secret was a fraud upon them. It was "no more a fraud than is the concealment by any bidder "of the ultimate sum he will be disposed to bid, in case "property is run up by competing bidders. It is difficult "to see how a public sale between competing bidders "could ever be sustained, if one interested in the prop- "erty sold may insist that he was taken by surprise, and "prejudiced because he had not been informed of the "amount to which bidders would run the property."

BRIEF.

I.

THE PROPER CONSTRUCTION OF THE WILL OF EDWARD MOTT ROBINSON.

After the decisions in *Barling* v. *Peters*, 131 Ill., 78; *Barling* v. *Peters*, 134 Ill., 606, and *Hyman* v. *Bogue*, 135 Ill., 9, all of which grew out of the same subject-matter, and the last of which was a bill to which the present appellants were parties complainant, filed to enforce an alleged right of redemption from the sale of December 21, 1889, a son and daughter of the appellants filed a bill in the State court to recover and set aside the decree of April 9, 1888, and the sale made in pursuance thereof, on the ground that they were necessary and should have been made parties. That case is reported under the title of *Green* v. *Grant*, in 143 Ill., p. 61.

With reference to the will of Robinson, the court there say, page 71:

"By the the terms of this will the absolute title is not "only *prima facie* vested in the trustees by the terms of "the devise, but it is clear that they can not perform the "duties imposed upon them without having that title. To "say that they take title only during the life of Mrs. Green, "is to wholly ignore the fact that by the express terms "of their trust they are to perform active duties after "her death. They must then convey to the issue of Mrs. "Green, if she leaves any, not jointly or as tenants in "common (as seems to be assumed), but in such shares as "the mother shall, by her last will and testament, direct. "Had section 21 continued to be a part of the trust

"estate until the period of distribution, and had Mrs. "Green left issue, the trustees might have been directed "by her, in her last will, to convey it all to one of such "issue to the exclusion of all others, giving them other "property. If it had continued to be a part of such estate, "and she made no appointment or direction as to the "shares and proportions in which it should be conveyed, "still more responsible duties would devolve "upon the trustees. They must, in that event, "first divide the estate into equal shares "among the issue of Mrs. Green, if she "leaves any, and then convey it in such equal shares. "They might unquestionably, under that power, convey "all or any portion of said section to one of such issue, "if in doing so they could at the same time make an "equal division of the entire estate. Moreover, the will "contemplates that no issue may survive the daughter, "and therefore directs the trustees in that event to con- "vey to other parties. There is no more reason for say- "ing the title to the trust estate will vest in the issue of "the daughter, at her death, without a conveyance, than "if she dies without issue it will, without conveyance, "vest in 'the person or persons who by the present law "of the State of New York, would have taken the same "as heirs-at-law and next of kin of Hetty Howland Rob- "inson if she had died seized and possessed thereof in- "testate.' In any event the trustees must convey."

Mrs. Green has no interest which should allow her to maintain the present bill. Mr. Green is not entitled to override the wishes of his two co-trustees, and makes no case. The allegation that the two co-trustees are unwilling operates to bar it.

While these objections might have been presented by

demurrer, the court is not precluded from their consideration.

Rhode Island v. *Massachusetts*, 14 Peters, 210, 258.

Farley v. *Kittson*, 120 U. S., 303.

II.

THERE WAS NO JURISDICTION OF PETERS, BARLING OR MANDELL.

They were not inhabitants of the Northern district of Illinois, were not found therein and did not appear.

Shaw v. *Quincy Mining Co.*, 145 U. S., 444.

Central Trust Co. v. *McGeorge*, 151 U. S., 129.

Barling and Mandell were not served with the citation. Peters appears here and asks for a dismissal of the appeal as to himself.

The claim that Barling and Mandell are adversaries in this suit of complainants is therefore not sound. (Appellants brief, 64.)

III.

PARTIES AND STRANGERS.

Appellants contend (brief, 64) that George M. Bogue, Hamilton B. Bogue, Hoyt, Smith, Pence and Block, who were parties defendant, were strangers to the original suit in the State Court.

George M. Bogue was a party to that suit, not origin-

ally, it is true, but by coming in after the sale in answer to the petition of the trustees. He was the purchaser at the sale and thereafter a necessary party. He would have been bounden if the sale had been set aside, and upon the entry of the order of confirmation his obligation to pay the unpaid eighty per cent. of his bid ($481,600) was adjudicated as against him. (Rec., 165.)

His partners, Hamilton B. Bogue and Hoyt, had no interest except as they derived through him. Block stood in a similar situation. Smith and Pence were solicitors for Peters. The worst that can be said is that H. B. Bogue, Hoyt, Block, Smith or Pence might have become custodians of moneys agreed to be paid to Peters upon the confirmation of the sale. It will be remembered that the bill in this case was filed two days before the order of confirmation was entered. It is therefore fair to say that no moneys had been paid to or for account of Peters when the bill was filed except the $2,000 referred to in the agreement. How such moneys could be stamped with a trust in favor of the trustees of the Robinson estate, or any person who might hold them be constituted a trustee for them is not explicable, because such moneys were to be paid when and only when the sale should be confirmed. The partners of Bogue, the solicitors, and Block are justified in insisting upon the adjudication against the trustees. To such extent, if proper parties to this suit, they were privies.

IV.

THE PLEA WAS SUFFICIENT.

The amount to be paid to the trustees of Robinson at the time of the sale of December 21, 1889, was $575,-568.42. That sum represented advances by Robinson and his trustees for a period of twenty-three years and more, including interest compounded to January 1, 1888. The amount of the bid was.. $ 602,000 00

Due Robinson estate.. ...	$575,568 42	
Master's fees.....	1,500 00	577,068 42
		$ 25,931 58

One half of this would be $12,465.79, and that sum would go to Peters, receiver, and the trustees, each, less one-half of interest to the date of confirmation, and court costs.

In other words, from the surplus proceeds of sale there was to be divided between Peters, receiver, and the Robinson trustees, equally, about $24,000. (Rec., 13, 165.)

The appellants now claim one-half of about $79,000 in addition, or the difference between $91,000 and upwards, and $12,000 and upwards.

It is evident that unless the $79,000 is to be considered a part of the proceeds of the sale, the trustees of Robinson could properly assert no right in it. Whatever moneys Bogue & Hoyt or those for whom they acted, or Block might have agreed to pay to Peter's receiver, or might have paid, were not moneys in which the trustees could claim a share, except, if at all, as they were derived from the lands through and by means of the sale. The bill

is framed upon the theory that the real bid was the sum of $760,912.26, and was made in pursuance of the agreement of December 20, 1889.

Counsel for appellants insist that such part of the *proceeds* (to use his language) "fraudulently obtained and "withheld" shall be decreed to be a trust fund; and, again, that the property had "been sold and the purchase "price paid therefor, and a portion of the same with-"held from the proper parties through collusion and "fraud."

If the agreement of December 20, 1889, was valid, the moneys paid and to be paid thereunder, were not of the proceeds of sale. If it had been invalid, the sale would not have been confirmed, but a resale would have been ordered upon such terms as the state court should have considered proper to impose.

The precise question before the state court was did the agreement have such relation to the sale as to make the sum to be paid Peters by Bogue and Hoyt an addition to the open bid.

The state court held, as against the trustees and Mrs. Green, and in favor of Peters, receiver, and Bogue, the purchaser, that it did not.

Mrs. Green's failure to object to the confirmation did not withdraw her from the operation of the order of confirmation. It would be strange if a party to a foreclosure or kindred suit should escape its effect by declining to object to confirmation. Mr. Green's withdrawal of objection left him in the same category. It is as if he had not objected.

We submit that within the meaning of all the authori-

tative cases the controversy was concluded in the state court, and that it is unnecessary to review the cases cited by counsel for appellants. They do not have the application for which he contends.

Respectfully submitted.

GEORGE W. SMITH,
DAVID B. LYMAN,
THEODORE S. GARNETT,
Counsel for George M. Bogue, Hamilton B. Bogue, Williard T. Block, George W. Smith, Abram M. Pence, Delia Hoyt, Guardian of Edith M. Hoyt and individually, and William H. Peters, Receiver, Appellees.